

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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	:	
In re:	:	Chapter 11
	:	
LA PALOMA GENERATING COMPANY, LLC, <i>et al.</i> , <sup>1</sup>	:	Case No. 16-12700 (CSS)
	:	
Debtors.	:	Jointly Administered
	:	
	:	<b>Re: D.I. 674, 676, 742</b>
	x	

**FIRST SUPPLEMENT TO THE  
PLAN SUPPLEMENT IN CONNECTION WITH THE  
JOINT CHAPTER 11 PLAN OF LA PALOMA GENERATING COMPANY, LLC, ET AL.**

Attached hereto is the First Supplement to the Plan Supplement (the “**First Supplement to Plan Supplement**”) in connection with, and as defined in, the *Joint Chapter 11 Plan of La Paloma Generating Company, LLC, et al.*, dated September 21, 2017 [D.I. 674] (the “**Plan**”). The documents, summaries, and other materials, each substantially in the form contained in the Plan Supplement and this First Supplement to Plan Supplement, are integral to and part of the Plan.

The Debtors, consistent with the terms of the Plan, reserve the right to alter, amend, modify or supplement any document or exhibit in the Plan Supplement and this First Supplement to Plan Supplement at any time before the Effective Date (as defined in the Plan) of the Plan, or any such other date as may be permitted by the Plan or by order of the Bankruptcy Court (as defined below).

A hearing to consider confirmation of the Plan and the Sale of assets under the Plan (the “**Sale and Confirmation Hearing**”) will be held on **October 30, 2017 starting at 10:00 a.m. (Eastern Daylight Time)**<sup>2</sup> before the Honorable Christopher S. Sontchi in the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, 5<sup>th</sup> Floor, Courtroom No. 6, Wilmington, Delaware 19801 (the “**Bankruptcy Court**”). The Sale and Confirmation Hearing may be continued from time to time without further notice other than the announcement by the

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are La Paloma Generating Company, LLC (9359), La Paloma Acquisition Co, LLC (2500), and CEP La Paloma Operating Company, LLC (2503). The address of the Debtors’ corporate headquarters is 1700 Pennsylvania Avenue, NW, Suite 800, Washington, DC 20006.

<sup>2</sup> On October 12, 2017, the Court notified counsel to the Debtors that the Sale and Confirmation Hearing would begin at 10:00 a.m. (Eastern Daylight Time) rather than 11:00 a.m. (Eastern Daylight Time), as had been originally scheduled by the Court in the order approving the Disclosure Statement for the Plan [D.I. 666].

Debtors in open court of the adjourned date(s) at the Sale and Confirmation Hearing or any continued hearing.

Dated: October 20, 2017  
Wilmington, Delaware

*/s/ Jason M. Madron*

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**FIRST SUPPLEMENT TO PLAN SUPPLEMENT DOCUMENTS**

Exhibits that have not been altered, amended, modified or supplemented from the Plan Supplement have not been included below or herein. Please refer to the *Plan Supplement in Connection with the Joint Chapter 11 Plan of La Paloma Generating Company, LLC, et al.*, filed on October 16, 2017 [D.I. 742] to review those Exhibits or any originally filed Exhibits supplemented below.

- **Exhibit A** – Form of Asset Purchase Agreement<sup>3</sup>

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<sup>3</sup> This document remains subject to negotiation and to material revision, amendment, modification and withdrawal.

**Exhibit A**

**Form of Asset Purchase Agreement**

**FIRST SUPPLEMENT TO PLAN SUPPLEMENT DOCUMENTS**

Exhibits that have not been altered, amended, modified or supplemented from the Plan Supplement have not been included below or herein. Please refer to the *Plan Supplement in Connection with the Joint Chapter 11 Plan of La Paloma Generating Company, LLC, et al.*, filed on October 16, 2017 [D.I. 742] to review those Exhibits or any originally filed Exhibits supplemented below.

- **Exhibit A** – Form of Asset Purchase Agreement<sup>3</sup>

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<sup>3</sup> This document remains subject to negotiation and to material revision, amendment, modification and withdrawal.

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**FORM OF**  
**ASSET PURCHASE AND SALE AGREEMENT**

**between**

**LA PALOMA GENERATING COMPANY, LLC,**  
**CEP LA PALOMA OPERATING COMPANY, LLC,**  
**(Seller)**

**and**

**CXA LA PALOMA, LLC**  
**(Buyer)**

**Dated as of [•], 2017**

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**THIS DRAFT IS SUBJECT TO MATERIAL ONGOING REVIEW AND REVISION**

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## ASSET PURCHASE AND SALE AGREEMENT

This Asset Purchase and Sale Agreement, dated as of \_\_\_\_\_, 2017 (this "**Agreement**"), is made and entered into by and between LA PALOMA GENERATING COMPANY, LLC, a Delaware limited liability company ("**La Paloma**"), and CEP LA PALOMA OPERATING COMPANY, LLC, a Delaware limited liability company ("**CEP**") and together with La Paloma, collectively the "**Seller**", and CXA LA PALOMA, LLC, a Delaware limited liability company ("**Buyer**").

### RECITALS

WHEREAS, on December 6, 2016 (the "**Petition Date**"), La Paloma, CEP and La Paloma Acquisition Co, LLC, a Delaware limited liability company (collectively, the "**Debtors**"), filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (as defined herein) in the United States Bankruptcy Court for the District of Delaware, and these cases are being jointly administered for procedural purposes only under Case No. 16-12700 (collectively, the "**Bankruptcy Cases**");

WHEREAS, Seller has continued in the possession of its assets and in the management of its business pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, Seller owns, among other things, a natural gas-fired, combined cycle electric generating facility consisting of four identical power blocks, located on an approximately 400-acre site in McKittrick, California, with a nameplate generating capacity of 1,200 MW as further described on Appendix A (the "**Power Station**") and certain other assets associated therewith;

WHEREAS, Buyer desires to purchase and acquire the Power Station and certain of Seller's contractual rights and interests related to the Power Station and other assets as further set forth herein, and Seller desires to sell such assets, properties, equipment and contractual rights to Buyer;

WHEREAS, Seller has determined, in the exercise of its business judgment, that it is advisable and in the best interest of its estate to consummate the Transactions (as defined herein) pursuant to the Sale Order (as defined herein) and, in furtherance thereof, Seller has approved this Agreement; and

WHEREAS, the Transactions are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Sale Order to be entered in the Bankruptcy Cases.

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

1.1 **Definitions**. As used in this Agreement, the following capitalized terms have the meanings set forth below:

“**Administrative Claims**” has the meaning ascribed to it in the Plan.

“**Affiliate**” means any Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether through ownership of voting securities or ownership interests, by Contract or otherwise.

“**Agreed Tax Treatment**” has the meaning specified in Section 2.7(a).

“**Agreement**” has the meaning specified in the introductory paragraph.

“**Allocation**” has the meaning specified in Section 2.7(a).

“**Allowed**” has the meaning ascribed to it in the Plan.

“**Assigned Contracts**” means those Contracts of Seller listed on Schedule 3.8(a) attached hereto, which Contracts shall be assumed by Seller and assigned to Buyer pursuant to section 365 of the Bankruptcy Code, the Sale Order or other order of the Bankruptcy Court and each other applicable conveyance document in accordance with this Agreement.

“**Assignment and Assumption Agreement**” means that Assignment and Assumption Agreement, substantially in the form attached hereto as Exhibit D.

“**Assumed Liabilities**” has the meaning specified in Section 2.3.

“**Avoidance Actions**” means any and all avoidance, recovery, subordination, or other actions or remedies that may be brought on behalf of Seller or their estates under the Bankruptcy Code or applicable non-bankruptcy law, including, without limitation, actions or remedies under chapter 5 of the Bankruptcy Code.

“**Bankruptcy Cases**” has the meaning specified in the Recitals.

“**Bankruptcy Code**” means title 11 of the United States Code, 11 U.S.C. § 101-1532. as amended.

“**Bankruptcy Court**” means the United States Bankruptcy Court for the District of Delaware or any other court having jurisdiction over the Bankruptcy Cases from time to time.

“**Bill of Sale**” means that Bill of Sale, substantially in the form attached hereto as Exhibit A.

“**Business Day**” means any day other than Saturday, Sunday, or any day on which banks located in the State of New York are authorized or obligated to close.

“**Buyer**” has the meaning specified in the introductory paragraph.

“**Buyer Approvals**” has the meaning specified in Section 4.3(c).

“**CARB**” means California Air Resources Board.

“**CARB Obligations**” has the meaning ascribed to it in the Plan.

“**Cash**” has the meaning ascribed to it in the Plan.

“**Cash Collateral Order**” means the *Consensual Order Authorizing Use of Purported Cash Collateral* filed in the Bankruptcy Cases [D.I. 336].

“**Casualty Estimate**” has the meaning specified in Section 5.8(a).

“**CEP**” has the meaning specified in the introductory paragraph.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*

“**Charter Documents**” means, with respect to any Person, the articles or certificate of incorporation, formation or organization and by-laws, the limited partnership agreement, the partnership agreement or the limited liability company agreement, or such other organizational documents of such Person, including those that are required to be registered or kept in the place of incorporation, organization or formation of such Person and which establish the legal personality of such Person.

“**Closing**” means the consummation of the Transactions.

“**Closing Agreements**” means the agreements to be delivered on or before Closing by the Parties pursuant to Article 8.

“**Closing Date**” has the meaning specified in Section 8.1.

“**Code**” means the United States Internal Revenue Code of 1986, as amended.

“**Confirmation Order**” has the meaning specified in Section 6.8.

“**Contract**” means any contract, agreement, understanding, arrangement, lease, sublease, license, sub-license, evidence of indebtedness, mortgage, indenture, security agreement, purchase order, sales order, promissory note, instrument or commitment (in each case, whether oral or written) that is binding on Seller or any assets or property of Seller or any Transferred Asset (or subjects any such assets or property or Transferred Asset to a Lien) including any and all amendments, supplements and modifications thereto.

**“Controlled Group Liabilities”** means any and all liabilities of the Power Station or any of its ERISA Affiliates (i) under Title IV of ERISA, (ii) under Sections 206(g), 302 or 303 of ERISA, (iii) under Sections 412, 430, 431, 436 or 4971 of the Code, (iv) as a result of the failure to comply with the continuation of coverage requirements of Section 601 et seq. of ERISA and Section 4980B of the Code, and (v) under corresponding or similar provisions of any foreign Laws.

**“Cure Costs”** means the amounts necessary to cure all defaults, if any, and to pay all actual pecuniary losses, if any, that have resulted from such defaults, under the Assigned Contracts, in each case as of the Petition Date and to the extent required by section 365 of the Bankruptcy Code and any order of the Bankruptcy Court, which amounts (if not already paid or to be paid in the ordinary course of business pursuant to an order of the Bankruptcy Court) shall be identified to Buyer on Schedule 3.8(a).

**“Dollar”** and **“\$”** means the lawful currency of the United States of America.

**“Environmental Claim”** means any claim, action, cause of action, administrative proceeding, investigation or notice by any Person alleging potential liability (including potential liability for investigatory costs, Remediation Measures, governmental response costs, natural resource damages, property damages, personal injuries or penalties) arising out of, based on, or resulting from (i) the presence, Release, or threat of Release of a Hazardous Material, or (ii) circumstances forming the basis of any violation or alleged violation of, or any liability under, Environmental Law.

**“Environmental Law”** means CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1471 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Oil Pollution Act, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq. and any Laws or Orders of the State of California or of any other Governmental Authority having jurisdiction over any Transferred Asset in question addressing (i) the prevention of pollution or protection of the environment, (ii) human and occupational health and safety, or (iii) the exposure to, or the use, generation, manufacture, treatment, recycling, storage, disposal, transport, labeling, presence, handling, Release or threatened Release of, any Hazardous Material, or the arrangement of any such activities.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**“ERISA Affiliate”** means all employers (whether or not incorporated) that would be treated together with the Power Station or Seller as a “single employer” within the meaning of Section 414 of the Code or Section 4001 of ERISA.

**“Excluded Assets”** has the meaning specified in Section 2.2.

**“Excluded Liabilities”** has the meaning specified in Section 2.4.

“**Excluded Records**” means all of Seller’s files, records, information and data, whether written or electronically stored, other than the Records, including any files, records, information and data pertaining primarily to any Tax Refund Claims.

“**Federal Power Act**” means the Federal Power Act, as amended, and the rules and regulations promulgated thereunder.

“**FERC**” means the Federal Energy Regulatory Commission.

“**FERC MBR Order**” means a final order issued by FERC under Section 205 of the Federal Power Act (i) authorizing Buyer to charge market-based rates for wholesale power sales under a filed tariff, and (ii) granting all waivers and blanket authorizations that are customarily granted to entities with market-based rate authority, including blanket authorization to issue securities and assume obligations or liabilities pursuant to section 204 of the Federal Power Act.

“**First Lien Encumbered Cash**” has the meaning ascribed to it in the Plan.

“**First Lien Term Loan Agreement**” means, collectively, that certain First-Lien Term Loan Credit Agreement, dated February 20, 2014, by and among Seller, Bank of America, N.A., in its capacity as administrative agent, and the lenders party thereto, and all security agreements, financing statements, pledge agreements, mortgages, and all other documents executed in connection therewith, in each case as amended, amended and restated, supplemented or otherwise modified from time to time.

“**First Lien Working Capital Agreement**” means, collectively, that certain First-Lien Working Capital Agreement, dated February 20, 2014, by and among Seller, Bank of America N.A., in its capacity as administrative agent, and the lenders party thereto, and all security agreements, financing statements, pledge agreements, mortgages, and all other documents executed in connection therewith, in each case as amended, amended and restated, supplemented or otherwise modified from time to time.

“**Fundamental Representations**” means the representations and warranties set forth in Sections 3.1 (Organization), 3.2 (Authority), 3.13 (Brokers), 4.2 (Authority), and 4.6 (Brokers).

“**GAAP**” means generally accepted accounting principles in the United States of America, applied on a consistent basis.

“**Governmental Authority**” means, with respect to any Person, any (a) court, tribunal, arbitrator, authority, agency, commission, official, legislature, branch or other instrumentality of the United States or any foreign country, or any state, county, city or other political subdivision or similar governing entity or any entity acting pursuant to delegated authority from any of the foregoing, (b) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority, or (c) governmental, quasi-governmental or non-Governmental Authority administering, regulating or having general oversight over gas, fuel oil and other fuel, electricity, power or other markets, including FERC, NERC and any regional transmission organization to the extent applicable to such Person, in each case acting within the scope of its authority and jurisdiction related to the Transactions, Transferred Assets or any related matter, and each as applicable.

**“Hazardous Materials”** means (a) any chemicals, materials, substances, or items in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste materials, raw materials, chemicals, finished products, by-products, or any other materials or articles, which are listed as, defined as, characterized as, regulated as or otherwise determined to be hazardous, toxic, dangerous, pollutants, contaminants, “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “special wastes,” “toxic substances,” “corrosive,” “flammable,” “reactive,” “radioactive,” or words of similar import under Environmental Law, (b) any petroleum or petroleum products, byproducts or breakdown products, radioactive materials, toxic mold, radon, asbestos or asbestos-containing materials, lead-based paint, urea formaldehyde foam insulation or polychlorinated biphenyls and (c) any other substance or waste that is now or hereafter prohibited, limited or regulated by any Governmental Authority under any Environmental Law.

**“Information Technology”** means the information technology, computers, computer systems, firmware, middleware, servers, workstations, routers, hubs, internet websites, data, databases, software programs, source code and object code, and user manuals owned by, used (or held for use by) leased by or licensed to Seller and used in connection with the business of the Power Station.

**“Intellectual Property”** means all United States and foreign intellectual property and rights wholly or jointly owned, assigned or registered to Seller arising from or in respect of the following: all (a) inventions, invention disclosures, discoveries, industrial designs, business methods, patents and patent applications, including all reissuances, continuations, continuations-in-part, divisions, supplementary protection certificates, extensions, renewals, and re-examinations thereof; (b) trademarks, service marks, certification marks, collective marks, logos, slogans, symbols, designs, trade names, corporate names, business names, assumed names, d/b/a's, fictitious names, brand names, trade dress, internet domain names, and other indicia of origin, and registrations and applications for registration and renewals thereof, including the goodwill associated therewith; (c) copyrights, works of authorship (including databases and other compilations of information, software, and other similar materials and internet website content), moral rights therein and thereto, and registrations and applications for registration thereof and all issuances, renewals, extensions, restorations and reversions thereof; and (d) trade secrets, know-how and other confidential proprietary information, including methods, processes, business plans, schematics, concepts, software, formulae, drawings, prototypes, models, designs, devices, technology, research and development and customer information and lists.

**“Interim Period”** means the period of time from the date hereof until the earlier of the Closing Date and termination of this Agreement.

**“Inventory”** means any and all of the inventory items used for the Power Station including: consumables; lubricants; chemicals, fluids, lubricating oils, filters, fittings, connectors, seals, gaskets, hardware, wire and other similar materials; maintenance, shop and office supplies and all other materials, supplies spare, replacement or other parts; tools, special tools, or similar equipment; and similar items of moveable property located or held for use at the Power Station Site.

**“IRS”** means the U.S. Internal Revenue Service.



“**Knowledge**” means with respect to Seller, the actual knowledge of all the Persons listed on Schedule 1.1, without inquiry.

“**La Paloma**” has the meaning specified in the introductory paragraph.

“**Laws**” means any or all laws, statutes, rules, regulations, ordinances and other pronouncements having the effect of law of any Governmental Authority.

“**Licensed Intellectual Property**” means all Intellectual Property that Seller is licensed or otherwise permitted to use by a third Person.

“**Liens**” means all mortgages, pledges, charges, liens, interests, debentures, trust deeds, claims, encumbrances, of any type whatsoever (whether known or unknown, secured or unsecured or in the nature of setoff or recoupment, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or nonmaterial, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Bankruptcy Cases, and whether imposed by agreement, understanding, Law, equity, or otherwise, including claims otherwise arising under doctrines of successor liability), assignments by way of security or otherwise, security interests, conditional sales contracts or other title retention agreements, rights of first refusal or similar interests or instruments charging, or creating a security interest in the Transferred Assets or any part thereof or interest therein, and any agreements, leases, licenses, occupancy agreements, options, easements, rights of way, restrictions, executions or other encumbrances (including notices or other registrations in respect of any of the foregoing) affecting title to the Transferred Assets or any part thereof or interest therein.

“**Loss**” means any and all judgments, liabilities, amounts paid in settlement, damages, fines, penalties, deficiencies, losses and expenses (including interest, court costs, reasonable fees of attorneys, accountants and other experts or other reasonable out-of-pocket expenses of litigation or other proceedings or of any claim, default or assessment).

“**Major Maintenance Spare Parts**” means those parts and equipment typically installed and repaired in connection with all significant maintenance performed during scheduled outages and forced outages that are considered CI, HGP or Major Inspections on the combustion turbine (as those terms are defined and more fully described in General Electric Power Systems’ publication 3620, as amended from time to time), overhaul of the steam turbine and generator, and major boiler repairs on the heat recovery steam generator.

“**Material Adverse Effect**” means any occurrence, condition, change, development, event or effect that has materially adversely affected, or would reasonably be expected to materially adversely affect, individually or in the aggregate, (x) the Transferred Assets, taken as a whole, or the business, properties, financial condition or results of operations of the Transferred Assets, taken as a whole, or (y) the ability of Seller to consummate the Transactions; *provided, however, that* in no event shall any of the following constitute a Material Adverse Effect only with respect to subparagraph (x) above: any occurrence, condition, change, development, event or effect resulting from (a) any change in economic conditions generally or

in the industry in which the Transferred Assets operate, including any change in markets for commodities or supplies, including electric power, capacity, transmission, natural gas or water, as applicable, used in connection with the Transferred Assets or in regional wholesale or retail markets for electric power; (b) any change in general regulatory, social or political conditions, including any acts of war, sabotage or terrorist activities; (c) the implementation of, failure to implement, revocation, or alteration in any manner of, a market for electric generation capacity by any Governmental Authority, irrespective of the form that such electric generation capacity market may take; (d) any change in the financial, banking, credit, securities or capital markets; (e) any change in any Laws (including Environmental Laws); (f) any effects of weather, geological or meteorological events or other natural disaster; (g) strikes, work stoppages or other labor disturbances; (h) any increases in the costs of commodities or supplies, including fuel, or decreases in the price of electricity; (i) any change caused by the pending sale of such Transferred Assets to Buyer, including changes due to the credit rating of Buyer; (j) any actions to be taken pursuant to or in accordance with this Agreement; (k) the announcement or pendency of the Transactions, including the impact thereof on the relationships, contractual or otherwise, with respect to the Transferred Assets in connection with employees, labor unions, customers, suppliers or partners, but specifically excluding from the scope of the exception set forth in subparagraph (k), for the avoidance of doubt, any lawsuit, action or other proceeding with respect to the Transactions and specifically excluding any approvals, authorizations, waivers or other permits required or necessary to be obtained in connection with the Transactions the failure to obtain which would result in a failure of a condition to the consummation of the Transactions; and (m) any failure, in and of itself, by Seller or the Transferred Assets to meet internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period, but not the underlying facts, conditions or circumstances resulting in such failure; *provided that* any change, event or effect underlying such failure shall be taken into consideration in determining whether a Material Adverse Effect has occurred; *provided, further*, that the commencement of the Bankruptcy Cases shall not, in itself, constitute a Material Adverse Effect; and *provided, further*, that, subparagraphs (a) through (h) above shall only apply so long as the applicable event or circumstance or series of events or circumstances do not disproportionately affect the Transferred Assets, taken as a whole, or the business, properties, financial condition or results of operations of the Transferred Assets, taken as a whole, compared with other similarly situated power generation facilities in the region.

“**MW**” means megawatts.

“**NERC**” means North American Electric Reliability Corporation and its regional entities.

“**Order**” means any writ, judgment, decree, injunction or order of any Governmental Authority.

“**Other Secured Claims**” has the meaning ascribed to it in the Plan.

“**Owned Intellectual Property**” has the meaning specified in Section 3.12(a).

“**O&M Agreements**” means [(i) that certain Operation, Maintenance, and Asset Management Agreement dated August 16, 2005 between La Paloma and CEP and (ii) that

certain Amended and Restated Operation and Maintenance Support Agreement dated May 1, 2015 between CEP and NAES Corporation.]

“**Party**” and “**Parties**” means each of Buyer and Seller.

“**Permits**” means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted by a Governmental Authority.

“**Permitted Liens**” means (a) any Lien for Taxes (i) not yet delinquent or (ii) the amount or validity of which is being contested in good faith by appropriate proceedings, (b) any Lien arising in the ordinary course of business by operation of Law with respect to a liability that is not yet delinquent, (c) all matters that are disclosed (whether or not subsequently deleted or endorsed over) in any title policies or title reports that have been made available to Buyer prior to the date hereof or obtained by or on behalf of Buyer prior to the date hereof, or that are disclosed on a survey of the Transferred Real Property Assets made available to Buyer prior to the date hereof, (d) any other imperfection or irregularity of title or other Lien that would not, individually or in the aggregate, materially detract from the value of, or materially interfere with the present use of, the Transferred Assets, (e) zoning, planning, and other similar limitations and restrictions, all rights of any Governmental Authority to regulate a Transferred Real Property Asset, and all other matters of public record, as of the date hereof, in each case, to the extent validly subsisting and applicable to any Transferred Real Property Asset, (f) all rights of condemnation, eminent domain or other similar rights of any Person that would not materially detract from the value of, or materially interfere with the present use of, any Transferred Asset, (g) any Lien to be released on or prior to the Closing identified on Appendix C, and (h) any Lien securing obligations under the Prepetition Credit Documents; *provided, that* any such Liens shall be discharged at or prior to the Closing under, and in accordance with, the Plan; *provided, further,* that any Liens extinguished pursuant to the Sale Order as provided in Section 2.1, shall cease to be Permitted Liens as of the Closing.

“**Person**” means any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, other business organization, trust, union, association or Governmental Authority.

“**Petition Date**” has the meaning specified in the Recitals.

“**Plan**” means the *Joint Chapter 11 Plan for La Paloma Generating Company, LLC*, et al., filed in the Bankruptcy Cases [D.I. 674], as it may be amended, amended and restated, supplemented or otherwise modified from time to time.

“**Plat**” means that certain Final Plat for the Power Station recorded in the Official Records of Kern County, California, as Parcels 1, 2, 3 and 4 of Parcel Map 10652, Book 50 of Maps, Pages 194 through 197 inclusive.

“**Post-Closing Tax Period**” means any taxable year or portion thereof that begins after the Closing Date.

“**Power Station**” has the meaning specified in the Recitals.

“**Power Station Site**” means the real property underlying the Power Station depicted in Appendix B, according to the Plat, together with all easements in favor thereof and other appurtenances thereto.

“**Prepetition Credit Documents**” means, collectively, the First Lien Term Loan Agreement, the First Lien Working Capital Agreement and the Second Lien Term Loan Agreement.

“**Priority Non-Tax Claims**” has the meaning ascribed to it in the Plan.

“**Priority Tax Claims**” has the meaning ascribed to it in the Plan.

“**Proceeding**” means any action, suit, litigation, arbitration, audit, investigation, or other similar proceeding, including any civil, criminal, administrative, or appellate proceeding conducted by any Governmental Authority or any arbitrator or arbitration panel.

“**Purchase Price**” has the meaning specified in Section 2.6.

“**Records**” means the files, records, information and data of Debtors pertaining primarily to the Transferred Assets except for any files, records, information and data pertaining primarily to any Tax Refund Claims.

“**Release**” means any release, spill, emission, leaking, pouring, pumping, emptying, dumping, escaping, leaching, presence, migration, injection, abandonment, deposit, disposal, dispersal, discharge or the like into or through the environment.

“**Remaining Cash**” has the meaning ascribed to it in the Plan.

“**Remediation Measures**” means action of any kind to address a Release of Hazardous Materials, including any (a) investigation, monitoring, clean-up, containment, remediation, mitigation, removal, disposal or treatment, including the preparation and implementation of any work plans and the obtaining of any applicable Permit from Governmental Authorities with respect thereto, and (b) response to, or preparation for, any inquiry, order, hearing or other Proceeding by or before any Governmental Authority with respect to such Release of Hazardous Materials.

“**Representatives**” means, as to any Person, its officers, directors, employees, managers, members, partners, shareholders, owners, counsel, accountants, financial advisers, sources of financing (including counsel to such sources) and consultants.

“**Sale Hearing**” means a hearing held by the Bankruptcy Court regarding approval of the Sale Order.

“**Sale Order**” means one or more Orders of the Bankruptcy Court, substantially in the form attached hereto as Exhibit C, or such other Orders as may be entered by the Bankruptcy Court in connection with the purchase and sale of the Transferred Assets, in form and substance reasonably acceptable to Buyer, that has not been stayed, vacated or stayed pending appeal, authorizing the sale of the Transferred Assets to Buyer upon the terms and subject to the

conditions contained in this Agreement and the consummation of the Transactions. For the avoidance of doubt, the Sale Order may also be an Order confirming the Plan.

“**Schedule**” means a schedule to this Agreement.

“**Second Lien Encumbered Cash**” has the meaning ascribed to it in the Plan.

“**Second Lien Term Loan Agreement**” means, collectively, that certain Second-Lien Term Loan Credit Agreement, dated February 20, 2014, by and among Seller, the predecessor administrative agent thereunder, and the lenders party thereto, and all security agreements, financing statements, pledge agreements, mortgages, and all other documents executed in connection therewith, in each case as amended, amended and restated, supplemented or otherwise modified from time to time.

“**Seller**” has the meaning specified in the introductory paragraph.

“**Seller Approvals**” has the meaning specified in Section 3.3(d).

“**Seller Consents**” has the meaning specified in Section 3.3(b).

“**Special Warranty Deed**” means that Special Warranty Deed substantially in the form attached hereto as Exhibit B.

“**Support Obligations**” has the meaning specified in Section 5.6.

“**Tax**” or “**Taxes**” means (a) all sales, use or transaction privilege taxes, real or personal property taxes, recordation and transfer taxes, payroll deduction taxes, franchise taxes, value added, occupation, excise, severance, windfall profits, escheat, stamp, license, payroll, social security, withholding and other taxes, taxes on gross or net income or other monetary obligations imposed, assessed or exacted by any Governmental Authority, including any payments in lieu of Taxes, and (b) any interest, penalties, adjustments and additions attributable to any of the foregoing, including any liability for any of the foregoing taxes or other items arising as a transferee, successor, member of a combined, consolidated, unitary or affiliated group, or by contract or otherwise.

“**Tax Refund Claim**” has the meaning ascribed to it the Plan.

“**Tax Return**” means any report, return, declaration, information return or other information required to be supplied to a Governmental Authority in connection with Taxes.

“**Termination Date**” has the meaning specified in Section 9.1(c).

“**Transaction Documents**” means this Agreement and the Closing Agreements.

“**Transactions**” means the transactions contemplated by this Agreement and the other Transaction Documents.

“**Transfer Taxes**” means all transfer, sales, use, goods and services, value added, documentary, stamp duty, conveyance, and other similar Taxes, duties, fees or charges.

“**Transferred Assets**” has the meaning specified in Section 2.1.

“**Transferred Information Technology**” has the meaning specified in Section 2.1(b)(iv).

“**Transferred Intellectual Property**” has the meaning specified in Section 3.12(a).

“**Transferred Permits**” has the meaning specified in Section 3.4.

“**Transferred Power Related Assets**” has the meaning specified in Section 2.1(b).

“**Transferred Real Property Assets**” has the meaning specified in Section 2.1(a).

“**Treasury Regulations**” means regulations promulgated by the U.S. Department of the Treasury under the Code.

[“**Water Rights**” means all rights held by Seller in, to and under (i) all well registrations for wells located on the Transferred Assets; (ii) any unregistered wells located on the Transferred Assets; (iii) all grandfathered groundwater and surface water rights associated with, or used in connection with the operation of, the Transferred Assets; and (iv) all other groundwater and surface water rights, whether arising by Contract (including the Amended and Restated Raw Water Agreement, Agreement No.16, between La Paloma Generating Company, LLC and West Kern Water District, dated January 31, 2000 and [●]), deed or operation of law, pertaining to the Transferred Assets, including all rights to any adjudications related to those Water Rights.]

## 1.2 **Certain Interpretive Matters**

(a) All article, section, subsection, schedule and exhibit references used in this Agreement are to articles, sections, subsections, schedules and exhibits to this Agreement unless otherwise specified. The exhibits and schedules attached to this Agreement constitute a part of this Agreement and are incorporated herein for all purposes.

(b) If a term is defined as one part of speech (such as a noun), it shall have a corresponding meaning when used as another part of speech (such as a verb). Unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders and vice versa. The words “includes” or “including” shall mean “including without limitation,” the words “hereof,” “hereby,” “herein,” “hereunder” and similar terms in this Agreement shall refer to this Agreement as a whole and not any particular section or article in which such words appear and any reference to a Law shall include any rules and regulations promulgated thereunder. Currency amounts referenced herein are in U.S. Dollars. Terms defined in the singular have the corresponding meaning in the plural and vice versa.

(c) Time is of the essence in this Agreement. Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

Whenever any action must be taken hereunder on or by a day that is not a Business Day, then such action may be validly taken on or by the next day that is a Business Day.

(d) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

(e) Each Party acknowledges that it and its attorneys have been given an equal opportunity to negotiate the terms and conditions of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party or any similar rule operating against the drafter of an agreement shall not be applicable to the construction or interpretation of this Agreement.

1.3 **Intention Regarding Classification.** The classification of certain items as personal property and/or the inclusion or exclusion of certain items in or from the definition of the Power Station Site for purposes of this Agreement is intended to be solely for the convenience of reference of the Parties and is not intended as an election to classify, or an admission regarding the classification of, such items as real or personal property, fixtures, improvements or otherwise for any other purposes, including accounting, recordation or perfection of liens, taxation, including real or personal property Taxes and transfer Taxes, title insurance coverage or any other purposes whatsoever.

## **ARTICLE 2** **BASIC TRANSACTIONS**

2.1 **Transferred Assets.** On the terms and subject to the conditions contained in this Agreement, at Closing, Buyer shall purchase from Seller, and Seller shall convey, assign, transfer and deliver to Buyer, free and clear of all Liens (including Permitted Liens) to the fullest extent permitted under the Bankruptcy Code after giving effect to the Sale Order (it being understood that the Sale Order shall extinguish Liens (including Permitted Liens) to the maximum extent permissible under applicable Law (including the Bankruptcy Code), except to the extent the Bankruptcy Court determines that Buyer is responsible for CARB Obligations in accordance with Section 5.14 of the Plan), all of Seller's right, title and interest in, to and under, all property (tangible or intangible), rights, goodwill, claims and assets relating to or used in or held for use in connection with the Power Station (other than any such assets specifically excluded pursuant to Section 2.2, collectively, the "**Transferred Assets**"), including the following assets:

- (a) the "**Transferred Real Property Assets**" consisting of:
  - (i) the Power Station Site; and
  - (ii) all pipeline easements, transmission line easements and other easements related to the Power Station;
- (b) the "**Transferred Power Related Assets**" consisting of:
  - (i) the Power Station;

- (ii) the Assigned Contracts and all rights thereunder;
- (iii) the Inventory;
- (iv) the Transferred Permits as set forth in Section 3.4;
- (v) the Transferred Intellectual Property and all rights thereunder, including with respect to any Owned Intellectual Property, all rights to enforce such Owned Intellectual Property with respect to past, present, and future infringements and misappropriations thereof and any rights of renewal of the Transferred Intellectual Property;
- (vi) all Information Technology assets (including servers, personal computers, printers and related software located at the Power Station) (“**Transferred Information Technology**”);
- (vii) all goodwill associated with the business of the Power Station or the Transferred Assets, including rights under any confidentiality Contracts executed by any third party for the benefit of Seller in connection with the business of the Power Station and in connection with the sale process for the business of the Power Station; and
- (viii) any Major Maintenance Spare Parts;
- (c) the Water Rights;
- (d) the Records;
- (e) all (i) Avoidance Actions and proceeds thereof, and (ii) accounts, rights, credits or allowances involving environmental matters or authorizations to Release specified units of substances issued by a Governmental Authority with jurisdiction over the Transferred Assets, whether those matters or authorizations are described in allowances, offsets, credits or by another term; *provided that* Seller shall surrender to CARB in the ordinary course of business such accounts, rights, credits or allowances relating to CARB after 10:00 A.M. (New York, NY time) on the Termination Date if the Closing does not occur on or prior to the Termination Date, in which case such accounts, rights, credits or allowances relating to CARB will no longer be Transferred Assets (for the avoidance of doubt and notwithstanding anything in this Agreement to the contrary, Buyer shall be obligated to consummate the Closing of the Transactions regardless of the inclusion of such accounts, rights, credits or allowances relating to CARB as Transferred Assets);
- (f) all claims, counterclaims, cross-claims, offsets or defenses, causes of action, choses in action, recoveries, judgments and similar rights in favor of or for the benefit of Seller to the extent relating to any Transferred Assets or any Assumed Liabilities;
- (g) any claim, right or interest of Seller in or to any refund, rebate, abatement or other recovery of Taxes imposed on Seller or the Transferred Assets, together with any interest due thereon or penalty rebate arising therefrom, including, without limitation, all rights to the proceeds of any refund, rebate, abatement or other recovery of Taxes, but excluding any Tax Refund Claim;



(h) the right to the proceeds of any refund, rebate, abatement or other recovery of any and all prepaid Taxes and Tax credits with respect to Taxes imposed on Seller or the Transferred Assets, but excluding any Tax Refund Claim;

(i) all third party property, casualty and liability insurance proceeds and all rights to third party property, casualty and liability insurance proceeds, in each case, to the extent received or receivable in respect of the Transferred Assets or the Assumed Liabilities; and

(j) all rights of Seller under or pursuant to all warranties, indemnities, representations and guarantees made by suppliers, manufacturers and contractors and other third parties to the extent relating to any of the Transferred Assets.

2.2 **Excluded Assets**. Notwithstanding anything to the contrary in this Agreement, the Transferred Assets specifically shall not consist of any of the following assets, rights, Permits, Contracts or other property of Seller or any of its Affiliates (collectively, the “**Excluded Assets**”):

(a) any First Lien Encumbered Cash;

(b) any Second Lien Encumbered Cash;

(c) any Remaining Cash and Cash in a sufficient amount for the Debtors to pay the Allowed Priority Tax Claims, Allowed Priority Non-Tax Claims, Allowed Other Secured Claims and the portion of Allowed Administrative Claims that is not paid from First Lien Encumbered Cash under the Plan;

(d) any Tax Refund Claims; *provided that* Buyer may receive Tax Distribution Liquidating Trust Interests under, as defined in and as set forth in, the Plan;

(e) personnel and employment records of or related to persons employed at the Power Station, if any, that Seller is prohibited by Law to transfer to Buyer;

(f) any minute books, Charter Documents or financial statements of Seller or its Affiliates, including the Excluded Records;

(g) all claims, counterclaims, cross-claims, offsets or defenses, causes of action, choses in action, recoveries, judgments and similar rights in favor of or for the benefit of Seller solely to the extent relating to any Excluded Assets, Excluded Records or Excluded Liabilities;

(h) all intercompany receivables, payables, and loans owed to Seller from any of its Affiliates; and

(i) any and all of Seller’s or any of its Affiliates’ rights arising under or with respect to:

(i) the rights which accrue or will accrue to Seller under this Agreement or any of the other Transaction Documents; and

(ii) any communications between Seller and any of its Affiliates, on the one hand, and their respective counsel or advisors, on the other hand, including attorney-client privileged or work product material, in the books, Records, documents and other information relating to the Transferred Assets.

2.3 **Assumed Liabilities.** From and after Closing, Buyer shall assume and pay, discharge and perform the following obligations and liabilities of Seller, in each case other than the Excluded Liabilities (collectively, the “**Assumed Liabilities**”).

(a) all liabilities and obligations of Seller under the Assigned Contracts (i) relating to the period from and after Closing and (ii) relating to the period prior to Closing to the extent required under section 365 of the Bankruptcy Code;

(b) all liabilities and obligations of Seller under the Transferred Permits, relating to the period from and after Closing;

(c) all liabilities and obligations of Seller relating to the Transferred Real Property Assets and Transferred Power Related Assets, relating to the period from and after Closing; and

(d) all liabilities and obligations of Seller relating to the Water Rights, constituting part of the Transferred Assets, relating to the period from and after the Closing.

For the avoidance of doubt, Seller specifically acknowledges that Buyer is not assuming any liability or obligation relating to Environmental Law or any Environmental Claim relating to the ownership or operation of any Transferred Asset prior to the Closing or in connection with incidents or events which occurred prior to the Closing, or any other Excluded Liabilities.

2.4 **Excluded Liabilities.** Buyer is assuming only the Assumed Liabilities and shall not assume or be responsible for the performance of any other obligations and liabilities of Seller or any of its predecessors or Affiliates (collectively, the “**Excluded Liabilities**”). For the avoidance of doubt, and without limiting the foregoing, Buyer shall not be obligated to assume and does not assume, and hereby disclaims any and all liabilities of Seller, other than the Assumed Liabilities, including the following liabilities of Seller or any predecessor or Affiliate of Seller (and any such liabilities shall be considered Excluded Liabilities for all purposes of this Agreement):

(a) any obligation or liability of Seller in respect of or arising from the operation or use of the Excluded Assets or other assets of Seller that are not part of the Transferred Assets;

(b) any obligation or liability of Seller with respect to Taxes (other than any Transfer Taxes that are the responsibility of Buyer pursuant to Section 5.4(a));

(c) liabilities to third parties for personal injury, tort or any other causes of action associated with or arising from the use or operation of the Transferred Assets prior to Closing;

(d) any liability of Seller representing indebtedness for money borrowed of Seller, including any liabilities arising from or relating to the Prepetition Credit Documents;

(e) any liability pursuant to Environmental Law arising from or relating to the ownership or operation of any Transferred Asset in connection with occurrences or incidents that occurred prior to the Closing;

(f) except for any liabilities specifically assumed by Buyer under the O&M Agreements, any liability arising out of or relating to (i) any “employee benefit plan”, as such term is defined in Section 3(3) of ERISA (regardless of whether the plan is subject to ERISA), maintained or contributed to by Seller or any of its Affiliates, including, without limitation, any employment-related Contract or any “employee pension benefit plan”, as such term is defined in Section 3(2) of ERISA, which is or was subject to Title IV of ERISA or Section 412 of the Code, or (ii) employment or performance of services for, or termination of employment or services, or potential employment or engagement for the performance of services for, Seller or any of its Affiliates of any individual Person, in each case, on or prior to Closing, regardless of whether such liability is paid on, before or after Closing;

(g) any liability of Seller or any of its Affiliates under any Contracts that are not Assigned Contracts;

(h) any liability for transaction expenses and fees and expenses payable to lenders, brokers, financial advisors, legal counsel, accountants and other professionals, and all costs and fees associated with the Bankruptcy Cases;

(i) all interests and liabilities that have not been otherwise assumed pursuant to this Agreement, to the extent that applicable Law permits the Transactions to be free and clear of such interests and liabilities under section 363 of the Bankruptcy Code;

(j) any intercompany payables or loans due from Seller to any of its Affiliates; and

(k) any costs or expenses for which Seller is expressly liable under this Agreement or the Transaction Documents.

All Excluded Liabilities shall be retained by and remain obligations and liabilities of Seller.

2.5 **Cure Costs.** At the Closing, Buyer shall fund and pay all Cure Costs. Buyer may revise Schedule 3.8(a) to exclude any Contracts at any time on or prior to the Sale Hearing; *provided that* no such change shall reduce the amount of the Purchase Price. If any Contract is excluded from the Transferred Assets as permitted by this Section 2.5, Seller shall promptly upon notice thereof take such steps as are reasonably necessary, including, if applicable, prompt delivery of notice to the non-debtor counterparty, to cause such Contracts to be excluded under the Sale Order and this Agreement.

2.6 **Purchase Price.** The purchase price for the Transferred Assets shall be (i) Buyer’s credit bid pursuant to section 363(k) of the Bankruptcy Code in an amount equal to one hundred and fifty million Dollars (\$150,000,000), (ii) Buyer’s payment of the Cure Costs as set forth in Section 2.5, and (iii) assumption by Buyer of the Assumed Liabilities (collectively, the **“Purchase Price”**).

2.7 **Agreed Tax Treatment and Purchase Price Allocation.**

(a) The Parties agree to treat the transactions contemplated by the Transaction Documents as a purchase of assets for U.S. federal, state and local income tax purposes, and the Parties agree that the fair market value of the Transferred Assets net of the Assumed Liabilities as of the date of this Agreement is as set forth in Schedule 2.7 (the “**Agreed Tax Treatment**”). Consistent with the Agreed Tax Treatment, the fair market value of the Transferred Assets (and other amounts constituting consideration for U.S. federal income tax purposes, such as Assumed Liabilities, to the extent known on the date hereof) shall be allocated among the Transferred Assets in accordance with the allocation set forth on Schedule 2.7 (the “**Allocation**”), which shall be adjusted as agreed to by the Parties to reflect any change in the amount of consideration for and the relative value of the Transferred Assets after the date of this Agreement. The Parties agree that the Allocation has been prepared in accordance with the principles of Section 1060 of the Code and the Treasury regulations promulgated thereunder.

(b) The Parties shall (i) report consistently with the Allocation and Agreed Tax Treatment in all Tax returns, including IRS Form 8594, which if applicable, Buyer and Seller shall timely file with the IRS, (ii) not take any position for any Tax purpose that is inconsistent with the Allocation or Agreed Tax Treatment, and (iii) promptly advise each other regarding the existence of any Tax audit, controversy or litigation related to the Allocation or the Agreed Tax Treatment, in each case, unless required to do otherwise by applicable Law.

(c) Notwithstanding anything in this Agreement to the contrary, the Parties shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement any amount as may be required to be deducted and withheld with respect to the making of such payment under applicable U.S. federal, state or local or foreign Laws. To the extent that amounts are so deducted and withheld by a Party, such deducted and withheld amounts shall be treated for all purposes of this Agreement as having been paid to the other Party or such other Person in respect of which such deduction and withholding was made.

**ARTICLE 3**  
**REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer as of the date of this Agreement that, except as disclosed in the Schedules:

3.1 **Organization.**

(a) Seller is a limited liability company duly formed, validly existing and in good standing under the Laws of its jurisdiction of formation. Seller has all necessary power and authority to own, lease and operate its properties and assets, including the Transferred Assets, and conduct its business as currently conducted. Seller is duly qualified or licensed to do business in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary, except where the failure to be so duly qualified or licensed would not reasonably be expected to result in a Material Adverse Effect.

(b) Seller has no subsidiaries and holds no equity interests in any other Person.

3.2 **Authority.** Subject to entry of the Sale Order, Seller has (or, in the case of its Closing Agreements to be entered into at Closing, will have at Closing) all requisite limited liability company power and authority to execute and deliver this Agreement and its Closing Agreements, to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution and delivery by Seller of this Agreement and its Closing Agreements, and the performance by Seller of its obligations hereunder and thereunder, have been (or, in the case of its Closing Agreements to be entered into at Closing, will at Closing have been) duly and validly authorized by all necessary limited liability company action. Subject to entry of the Sale Order, this Agreement and Seller's Closing Agreements have been (or, in the case of Seller's Closing Agreements to be entered into at Closing, will at Closing have been) duly and validly executed and delivered by Seller and constitute (or, in the case of its Closing Agreements to be entered into at Closing, will at Closing constitute) the legal, valid and binding obligation of Seller enforceable against Seller in accordance with their terms, except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally, or by general equitable principles.

3.3 **No Conflicts; Consents and Approvals.** Subject to entry of the Sale Order, the execution and delivery by Seller of this Agreement or any Closing Agreements, and the performance by Seller of its obligations under this Agreement or any Closing Agreements, and the consummation of the Transactions do not and will not:

(a) conflict with, violate or result in a breach of any of the Charter Documents of Seller or any of its Affiliates;

(b) assuming the consents and notices disclosed on Schedule 3.3(b) (the "**Seller Consents**") have been obtained, conflict with, violate or result in a violation or default under (in each case, with or without notice or lapse of time, or both), or give rise to a right of consent, purchase, amendment, modification, acceleration, termination, notice or cancellation under any provisions, terms and conditions of, any Assigned Contract or Transferred Permit, or any other Contract or Permit to which Seller is a party or by which any of its properties or assets are bound, except for any such conflict, violation or default which would not reasonably be expected to result in a Material Adverse Effect;

(c) give rise to the creation of any Lien (other than Permitted Liens) upon or with respect to any of the Transferred Assets; and

(d) assuming all required filings, waivers, approvals, consents, authorizations and notices disclosed on Schedule 3.3(d) (collectively, the "**Seller Approvals**") and the Seller Consents have been made, obtained or given, (i) violate or result in a breach of any Law or Order applicable to Seller or the Transferred Assets which would reasonably be expected to result in a Material Adverse Effect or (ii) require the consent or approval of, or notice to any Governmental Authority under any Law or Order applicable to Seller or the Transferred Assets other than any such consent, approval or notice which, if not made or obtained, would not reasonably be expected to result in a Material Adverse Effect.

3.4 **Permits**. Seller possesses all Permits (other than Permits required under Environmental Laws, which are addressed in Section 3.6) that are required for the ownership and operation of the Power Station and other Transferred Assets in the manner in which it is currently owned and operated, and each such Permit (including Permits required under Environmental Laws) held by Seller is listed on Schedule 3.4 (collectively, the “**Transferred Permits**”), except (i) any such Permits relating exclusively to the construction (and not operation) of the Power Station, which are identified on Schedule 3.4 as such or (ii) any such Permit, the absence of which would not reasonably be expected to result in a Material Adverse Effect. All such Permits are in full force and effect and Seller is in compliance with each such Permit, except where any such failure to be in full force and effect or non-compliance would not reasonably be expected to result in a Material Adverse Effect. Seller or its Affiliates have not received, since September 1, 2014, any written notification from any Governmental Authority alleging that it is in violation of any of such Transferred Permits, except where any such violation would not reasonably be expected to result in a Material Adverse Effect.

3.5 **Compliance with Laws and Orders**. Except as set forth on Schedule 3.5, (a) the Power Station is currently operated, and in the past three (3) years has been operated, in compliance with all Laws and Orders applicable to it in all material respects, and (b) Seller (and any other operator of the Transferred Assets) is, and has for the past three (3) years been, in material compliance with all Laws and Orders applicable to the Transferred Assets and the Assumed Liabilities; *provided, however, that this Section 3.5 does not address Environmental Laws, which are exclusively addressed by Section 3.6, matters relating to Taxes, which are exclusively addressed by Section 3.10, or matters relating to Permits which are exclusively addressed in Section 3.4*. Seller, any operator of the Transferred Assets or any of their Affiliates, since September 1, 2014, have not received any written notification from any Governmental Authority alleging that it is in material violation of any of such Laws or Orders.

3.6 **Environmental Matters**.

(a) Except as set forth in Schedule 3.6(a), Buyer has been provided with copies of, or access to, all material final environmental site assessment reports prepared since September 1, 2014 or otherwise in the possession of Seller or its Affiliates and that relate to the Transferred Assets.

(b) Except as disclosed on Schedule 3.6(b):

(i) the Transferred Assets are, and have been for the past three (3) years, in compliance with all applicable Environmental Laws, including all Permits issued under Environmental Laws, except for any failure to comply that would not reasonably be expected to result in a Material Adverse Effect;

(ii) there have been no material Releases or threatened Releases of any Hazardous Material (i) at, in, under, on, or from any Transferred Asset or (ii) at, in, under, on, or from any third-party location in connection with any Transferred Asset;

(iii) no material filings, notices, consents or approvals are required pursuant to any Environmental Law in connection with the consummation of the Transactions;

(iv) all material Permits required under Environmental Laws for conducting the operations of the Transferred Assets have been obtained, maintained and applied for, and are currently in full force and effect; and

(v) no Order or Proceeding related to any of the Transferred Assets is pending or, to the Knowledge of Seller, threatened under any applicable Environmental Law that would reasonably be expected to result in a Material Adverse Effect, and to the Knowledge of Seller, there are no facts, circumstances or conditions relating to the past or present business or operations of any Transferred Assets that would reasonably be expected to form the basis of any such Order or Proceeding.

(c) Notwithstanding any other provision of this Agreement to the contrary, this Section 3.6 contains the sole and exclusive representations and warranties of Seller with respect to the environment, including, but not limited to, matters related to Environmental Laws, Hazardous Materials, Remediation Measures and Proceedings related to Environmental Laws.

### 3.7 **Transferred Assets.**

(a) Appendix B contains a depiction of the Power Station Site and a true, correct and complete list of the Transferred Real Property Assets and the Transferred Power Related Assets that constitute material tangible property. Seller has good and marketable fee simple title to the Transferred Real Property Assets, free and clear of all Liens, except for Permitted Liens, Liens created pursuant to this Agreement or as otherwise set forth on Schedule 3.7(a). Seller does not own any real property other than the Transferred Real Property Assets and the Transferred Power Related Assets (to the extent constituting real property). Seller has not received, since September 1, 2014 any written notice of any, and to the Knowledge of Seller, there is no threatened, condemnation, zoning or other similar Proceeding affecting any Transferred Real Property Assets or any Transferred Power Related Assets. Neither the whole nor any portion (other than a de minimis portion) of any Transferred Real Property Asset or any Transferred Power Related Asset has been damaged or destroyed by fire or other casualty. Seller has delivered to Buyer or made available to Buyer true and complete copies of all title insurance policies and surveys in Seller's possession with respect to the Transferred Real Property Assets and/or the Transferred Power Related Assets, and there have been no claims made under any such title insurance policies since September 1, 2014 to the date hereof. Seller does not lease any real property.

(b) Seller owns and has good and marketable title to (or valid license or right to use) the Transferred Power Related Assets, free and clear of all Liens, except for Permitted Liens, Liens created pursuant to this Agreement or as otherwise set forth on Schedule 3.7(b).

(c) Schedule 3.7(c) describes all Transferred Assets and Assumed Liabilities held by CEP.

### 3.8 **Assigned Contracts.**

(a) All the Assigned Contracts, and the Cure Costs with respect to each, are listed on Schedule 3.8(a). Seller has provided to Buyer a copy of or access to each Assigned Contract. There are no material Contracts that relate to the operation of the Power Station or by which the

Transferred Assets are bound, other than the Assigned Contracts, the Contracts listed on Schedule 3.8(a) and Contracts that are included as Excluded Assets.

(b) Except as set forth on Schedule 3.8(b) (and except with respect to Assigned Contracts that expire in accordance with their terms prior to the Closing without any ongoing liabilities), each of the Assigned Contracts is in full force and effect and constitutes a legal, valid and binding obligation of Seller, and, to Seller's Knowledge, of the other Person(s) party thereto, and enforceable in accordance with its terms, except to the extent enforceability may be subject to the Bankruptcy Cases, and except as the same may be limited by Laws affecting the rights of creditors generally or by general equity principles, other than as would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. Except as a result of the Bankruptcy Cases, Seller is not and, to Seller's Knowledge, no counterparty is, in default in the performance or observance of any term or provision of, and no event has occurred which, with lapse of time or action by a third party, would result in such default under any Assigned Contracts, other than as would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect. Seller has not received written notice from any other party to any Assigned Contracts that it intends to terminate any such Assigned Contract. Subject to the entry of the Sale Order and payment of Cure Costs, each Assigned Contract may be assumed and assigned to Buyer.

3.9 **Legal Proceedings.** Except as set forth in Schedule 3.9, and other than the Bankruptcy Cases, there is no Proceeding pending or, to the Knowledge of Seller, threatened against Seller or affecting the Transferred Assets or the Assumed Liabilities, before or by any Governmental Authority that would reasonably be expected to result in a Material Adverse Effect or that seeks an Order restraining, enjoining or otherwise prohibiting or making illegal any of the Transactions; *provided, however, that* this Section 3.9 does not address Proceedings under Environmental Laws, which are exclusively addressed by Section 3.6, or matters relating to Taxes, which are exclusively addressed by Section 3.10.

3.10 **Tax Matters.** Except as set forth in Schedule 3.10, (a) except to the extent an inaccuracy of the following would not result in a Lien (other than a Permitted Lien) on any of the Transferred Assets, Seller has (i) filed or caused to be filed on its behalf all material Tax Returns required to be filed by it with respect to the income, operations or ownership of Transferred Assets on or prior to the date hereof (taking into account any valid extension of the due date for filing), and such Tax Returns are true, correct and complete in all material respects; (ii) timely paid all Taxes shown as due and payable on such Tax Returns; (iii) paid all other material Taxes attributable to the Transferred Assets that have become due and payable on or prior to the date hereof; (b) there are no Liens (other than Permitted Liens) currently existing, pending or, to the Knowledge of Seller, threatened with respect to any Transferred Assets attributable to any unpaid Taxes; (c) no written claim has been made by a Governmental Authority in a jurisdiction that Seller does not file a Tax Return that Seller, with respect to the income, operations or ownership of the Transferred Assets, is or may be subject to taxation by such jurisdiction; (d) Seller is not currently the subject of an audit or other examination with respect to Taxes by a Governmental Authority with respect to the income, operations or ownership of the Transferred Assets; or to the Knowledge of Seller, no such audit has been threatened in writing; and Seller has not received any written notices from any Governmental Authority relating to any issue that could affect any Tax liability with respect to the income, operations or ownership of the



Transferred Assets; (e) Seller, as of the Closing Date, (i) has not entered into an agreement or waiver or been requested to enter into an agreement or waiver extending any statute of limitations relating to the payment or collection of Taxes with respect to the income, operations or ownership of Transferred Assets that has not expired, and (ii) is not presently contesting the Tax liability with respect to the income, operations or ownership of the Transferred Assets before any court, tribunal or agency; (f) all material Taxes that Seller is (or was) required by Law to withhold or collect with respect to the income, operations or the ownership of the Transferred Assets in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party have been duly withheld or collected, and have been timely paid over to the proper authorities to the extent due and payable; (g) no Tax allocation, Tax sharing or Tax indemnity or similar agreement or arrangement is in effect, in each case, with respect to the income, operations or the ownership of the Transferred Assets, that would, in any manner, bind, obligate or otherwise restrict Buyer following the Closing; and (h) Buyer will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of (or corresponding to) any prepaid amount received by Seller on or prior to the Closing Date.

3.11 **Labor and Employment Matters**. The Power Station and Seller do not and have not in the last five (5) years had any employees. The Power Station and Seller do not currently and have not in the last five (5) years sponsored, maintained or contributed to any “employee benefit plan” as such term is defined in Section 3(3) of ERISA and the Power Station has no liability with respect to such a plan. There does not now exist, nor do any circumstances exist that could result in any Controlled Group Liability of Seller or any Affiliate that would or could become a liability following the Closing Date of Buyer, the Power Station or their respective Affiliates. The Power Station and Seller are not a party to, or bound by, the terms of any collective bargaining agreement or other Contract with any labor union or other representative of employees, and no such agreements are being negotiated. No employee providing services to the Power Station is represented by a labor union or similar organization or subject to the terms of a collective bargaining agreement or similar Contract. There are no labor disputes existing or, to the Knowledge of Seller, threatened with respect to any employee providing services to the Power Station involving, by way of example, strikes, work stoppages, slowdowns, picketing, or any other interference with work or production, or any other concerted action by employees, and the Power Station has not experienced any material labor difficulties in the last three (3) years. No unfair labor practice charge, grievance, complaint, or other legal action arising out of any collective bargaining agreement or employment or labor relationship with any employees providing services to the Power Station exists or, to the Knowledge of Seller, is threatened.

3.12 **Intellectual Property Rights.**

(a) (i) All Intellectual Property owned by Seller relating to or used in or held for use in connection with the Power Station (“**Owned Intellectual Property**”) and (ii) all of Seller’s rights under any Licensed Intellectual Property, are collectively referred to herein as the “**Transferred Intellectual Property**”. Schedule 3.12(a) sets forth a true and complete list of all Transferred Intellectual Property that has issued, is registered or is the subject of a pending application for issuance or registration.

(b) Except as set forth on Schedule 3.12(b): (i) Seller exclusively owns all Owned Intellectual Property and has valid rights to use all other Intellectual Property as such Intellectual Property is used in the ordinary course of business of the Power Station, in each case, free and clear of all Liens (other than Permitted Liens) and all such rights are included in the Transferred Intellectual Property, and none of the foregoing will be adversely affected by the consummation of the Transactions; (ii) no Owned Intellectual Property is the subject of any written claim challenging ownership, validity, use or enforceability thereof (and there are no Proceedings pending or, to Seller’s Knowledge, threatened, alleging any of the foregoing) or any outstanding Order restricting its use or adversely affecting Seller’s rights thereto; (iii) Seller is not currently infringing, misappropriating, diluting or otherwise violating (and has not, in the past six (6) years, infringed, misappropriated, diluted or otherwise violated) any third Person’s Intellectual Property rights and there are no Proceedings pending or, to Seller’s Knowledge, threatened, against Seller alleging any of the foregoing; (iv) Seller has not received any written notice of any default or any event that with notice or lapse of time, or both, would constitute a default under any Contract providing for Licensed Intellectual Property and to which Seller is a party or by which it is bound; (v) to Seller’s Knowledge, no Person has or is infringing, diluting, misappropriating or otherwise violating any Transferred Intellectual Property; and (vi) Seller has taken commercially reasonable steps to protect and preserve the confidentiality of any material trade secrets included in the Transferred Intellectual Property.

(c) The Transferred Information Technology (i) performs in all material respects in accordance with its published user documentation; (ii) operates and performs in all material respects as currently required to operate the business of the Power Station; (iii) has not materially malfunctioned or failed within the past three (3) years; (iv) has been maintained in all material respects in accordance with Seller’s internal standards as well as any applicable warranties or other user instructions from suppliers; (v) to Seller’s Knowledge, does not contain any worms, viruses, bugs or other embedded faults or other malicious devices that could materially and adversely impact the functionality of the Transferred Information Technology. Seller has implemented backup, security, and disaster recovery technology consistent with applicable regulatory standards and industry best practices.

3.13 **Brokers.** Neither Seller nor any of its Affiliates has any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the Transactions for which Buyer could become liable or obligated at or after the Closing.

3.14 **Insurance.** Schedule 3.14 sets forth as of the date of this Agreement a list of all material insurance policies held by or issued specifically on behalf of and for the benefit of Seller in connection with the ownership and operation of the Transferred Assets. Such insurance

policies are in full force and effect, and all premiums due and payable with respect thereto have been paid. Seller has not received any written notice of cancellation or non-renewal of any such insurance policies. To Seller's Knowledge, except as set forth on Schedule 3.14, there are no material claims pending under any such policies as of the date hereof.

3.15 **Water**. Seller is the owner of the Water Rights, free of any Liens, except Permitted Liens. Seller has provided to Buyer all relevant statements of claimant, well registrations, Permits, other documents and the aquifer protection permit related to the Water Rights. To Seller's Knowledge, there are no other material documents related to the Water Rights that are pertinent to Buyer's evaluation of the Water Rights. Seller has no Knowledge of any past shortages of water or the inability to access or use the water to which Seller are entitled to use at or with respect to the Power Station. The water available pursuant to the Water Rights has historically been sufficient for the operation of the Power Station in the manner to which it has been operated.]

3.16 **Financial Statements**. Attached as Schedule 3.16 is a copy of the audited financial statements of Seller for the year ended December 31, 2015.

3.17 **Collateral**. Schedule 3.17 sets forth a true and complete list of all guarantees, letters of credit or other credit support obligations provided by Seller or any of its Affiliates, or held by Seller or any of its Affiliates, with respect to the Transferred Assets.

3.18 **Sufficiency of Assets**. Except for Excluded Assets and assets consumed in the ordinary course of business, the Transferred Assets include all of the assets (whether tangible or intangible) owned, used or held for use by Seller to conduct the business of the Power Station as conducted as of the date hereof except as would not reasonably be expected to have a Material Adverse Effect. No Affiliate of Seller (a) is the counterparty to a Contract with Seller by which the Transferred Assets are affected or bound or (b) owns or has an interest in, directly or indirectly, in whole or in part, any tangible or intangible property primarily used in the conduct of the business of the Power Station (other than Transferred Assets).

3.19 **Absence of Certain Developments**. Since December 31, 2016, except the Bankruptcy Cases, as expressly contemplated by this Agreement or as set forth in Schedule 3.19, (a) Seller has conducted the business of the Power Station in the ordinary course of business consistent with past practice and has not taken any actions which would be in breach of Section 5.3 if such actions were to be taken after the date hereof without Buyer's prior written consent, and (b) there has not been any Material Adverse Effect.

#### **ARTICLE 4** **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents and warrants to Seller as of the date of this Agreement that:

4.1 **Organization**. Buyer is a limited liability company duly formed, validly existing and in good standing under the Laws of the jurisdiction of its formation.

4.2 **Authority**. Buyer has (or, in the case of its Closing Agreements to be entered into at Closing, will at Closing have) all requisite limited liability company power and authority

to enter into this Agreement and its Closing Agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the Transactions. The execution and delivery by Buyer of this Agreement and of its Closing Agreements and the performance by Buyer of its obligations hereunder and thereunder have been (or, in the case of its Closing Agreements to be entered into at Closing, will at Closing have been) duly and validly authorized by all necessary company action on behalf of Buyer. This Agreement and the Buyer's Closing Agreements have been (or, in the case of its Closing Agreements to be entered into at Closing, will at Closing have been) duly and validly executed and delivered by Buyer and constitute (or, in the case of its Closing Agreements to be entered into at Closing, will at Closing constitute) the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their terms except as the same may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, arrangement, moratorium or other similar Laws relating to or affecting the rights of creditors generally or by general equitable principles.

4.3 **No Conflicts; Consents and Approvals.** Subject to the entry of the Sale Order, the execution and delivery by Buyer of this Agreement and the performance by Buyer of its obligations hereunder and the consummation by Buyer of the Transactions do not:

(a) conflict with, violate or result in a breach of the Charter Documents of Buyer;

(b) conflict with, violate or result in a violation or breach or default under (in each case, with or without notice or lapse of time, or both), or give rise to a right of consent, purchase, amendment, modification, acceleration, termination, or cancellation under any provisions, terms and conditions of any Contract to which Buyer is a party, except for any such conflict, violation or default which would not reasonably be expected to result in a material adverse effect on Buyer's ability to consummate the Transactions; or

(c) assuming all required filings, waivers, approvals, consents, authorizations and notices disclosed in Schedule 4.3 (collectively, the "**Buyer Approvals**") have been made, obtained or given, (i) violate or result in a breach of any Law or Order applicable to Buyer, except as would not reasonably be expected to result in a material adverse effect on Buyer's ability to consummate the Transactions or (ii) require any consent or approval of any Governmental Authority under any Law or Order applicable to Buyer, other than in each case any such consent or approval which, if not made or obtained, would not reasonably be expected to result in a material adverse effect on Buyer's ability to consummate the Transactions.

4.4 **Legal Proceedings.** There is no Proceeding (filed by any Person other than Seller or any of its Affiliates) pending or, to Buyer's knowledge, threatened, against Buyer before or by any Governmental Authority, which seeks an Order restraining, enjoining or otherwise prohibiting or making illegal any of the Transactions.

4.5 **Compliance with Laws and Orders.** Buyer is not in violation of, or in default under, any Law or Order applicable to Buyer or its assets the effect of which, individually or in the aggregate, would reasonably be expected to hinder, prevent or materially delay Buyer from consummating the Transactions.

4.6 **Brokers.** Buyer and its Affiliates do not have any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the Transactions for which Seller or any of its Affiliates could become liable or obligated after the Closing.

4.7 **Opportunity for Independent Investigation.** Prior to its execution of this Agreement, Buyer and its Affiliates have conducted to their satisfaction an independent investigation and verification of the current condition of title to the Transferred Assets. In making its decision to execute this Agreement and to purchase the Transferred Assets, except as set forth in Article 3 of this Agreement, Buyer has relied and will rely solely upon the results of such independent investigation and verification and the terms and conditions of this Agreement. Without limiting the generality of the foregoing, Buyer acknowledges, on behalf of itself and its Affiliates, that none of Seller, any of its Representatives or Affiliates makes any representations or warranties with respect to (a) any projection, estimate or budget delivered or made available to Buyer or its Affiliates or Representatives of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Transferred Assets or the future business or operations of the Transferred Assets or (b) any other information or documents made available to Buyer or its Representatives with respect to the Transferred Assets, except as expressly set forth in Article 3 of this Agreement. Buyer further acknowledges, on behalf of itself and its Affiliates, that it has not relied on any representation not expressly set forth in Article 3 of this Agreement.

4.8 **No Conflicting Contracts.** Except as set forth in Schedule 4.8, neither Buyer nor any of its Affiliates is a party to any Contract to build, develop, acquire or operate any power facility that would reasonably be expected to cause a material delay in or failure to obtain any Governmental Authority's granting of a Buyer Approval or a Seller Approval, and neither Buyer nor any of its Affiliates has any plans to enter into any such Contract prior to the Closing Date.

## **ARTICLE 5** **COVENANTS**

### 5.1 **Efforts to Close; Regulatory and Other Approvals.**

(a) Subject to any requirements or limitations resulting from the Bankruptcy Cases, each of Seller and Buyer shall (and each shall coordinate with its respective applicable Affiliates to and shall cause its respective applicable Subsidiaries to) use commercially reasonable efforts to obtain as promptly as practicable all Seller Approvals, the Seller Consents and Buyer Approvals applicable to such Person, and all other material consents and approvals that any of Seller, Buyer, or their respective Affiliates are required to obtain in order for such Person to consummate the Transactions; *provided that*, for purposes of clarification and notwithstanding anything to the contrary in this Agreement, the obtaining of such consents and approvals shall not be a condition to Closing except to the extent expressly set forth in Article 6 or Article 7, as applicable.

(b) Each of Seller and Buyer shall and shall coordinate with its respective Affiliates to and cause its respective Subsidiaries to (i) make or cause to be made the filings required of such Party or any of its Affiliates under any Laws applicable to it with respect to the Transactions and to pay any fees due of it in connection with such filings, as promptly as is

reasonably practicable; *provided that*, for purposes of clarification and notwithstanding anything to the contrary in this Agreement, such filings and payments shall not be conditions to Closing except to the extent expressly set forth in Article 6 or Article 7, as applicable, (ii) cooperate with the other Party and furnish the information in such Party's possession that is necessary in connection with such other Party's filings, (iii) use commercially reasonable efforts to cause the expiration of the notice or waiting periods under any Laws applicable to it with respect to the consummation of the Transactions as promptly as is reasonably practicable, (iv) promptly inform the other Party of any communication from or to, and any proposed understanding or agreement with, any Governmental Authority in respect of such filings, and permit the other Party to review in advance any proposed filing by such Party with any Governmental Authority, (v) reasonably consult and cooperate with the other Party in connection with any analyses, appearances, presentations, memoranda, briefs, arguments and opinions made or submitted by or on behalf of any Person in connection with all meetings, actions and proceedings with Governmental Authorities relating to such filings, (vi) comply, as promptly as is reasonably practicable, with any requests received by such Party or any of its Affiliates under any Laws for additional information, documents or other materials with respect to such filings, (vii) use commercially reasonable efforts to resolve any objections as may be asserted by any Governmental Authority or other Person with respect to the Transactions and (viii) use commercially reasonable efforts to contest and resist any action or proceeding instituted (or threatened in writing to be instituted) by any Governmental Authority challenging the Transactions as violative of any Law. If Seller or Buyer (or any of their applicable Affiliates) intends to participate in any meeting with any Governmental Authority with respect to such filings and if permitted by, or acceptable to, the applicable Governmental Authorities, it shall give the other Party reasonable prior notice of, and an opportunity to participate in, such meeting.

(c) In connection with any such filings or applications made pursuant to this Section 5.1, each Party shall cooperate in good faith with Governmental Authorities and use its commercially reasonable efforts to complete lawfully the Transactions.

(d) Each of Seller and Buyer shall provide prompt notification to the other when it becomes aware that any such consent or approval referred to in this Section 5.1 is obtained, taken, made, given or denied, as applicable.

(e) In furtherance of the foregoing covenants:

(i) Each of Seller and Buyer shall prepare, as soon as is practicable following the execution of this Agreement, all necessary filings applicable to it in connection with the Transactions that may be required by FERC (including authorization from FERC pursuant to section 203 of the Federal Power Act for the transfer of jurisdictional assets) and from the Federal Communications Commission for the transfer of a radio license or any other federal, state or local Laws; *provided that*, for purposes of clarification and notwithstanding anything to the contrary in this Agreement, such filings shall not be conditions to Closing except to the extent expressly set forth in Article 6 or Article 7, as applicable. Each of Buyer and Seller shall submit such filings applicable to it as soon as practicable, but in no event later than five (5) Business Days after the execution hereof for filings with FERC. The Party or Parties making such filings shall request expedited treatment of any such filings, shall promptly furnish each other with copies of any notices, correspondence or other written communication received by it

from the relevant Governmental Authority, shall promptly make any appropriate or necessary subsequent or supplemental filings required of it and shall cooperate in the preparation of such filings as is reasonably necessary and appropriate. Any filing fees, costs or expenses arising out of or relating to such filings shall be for the account of Buyer.

(ii) Buyer and Seller shall not, and shall coordinate with their respective Affiliates not to and shall cause their respective Subsidiaries not to, take any action that could reasonably be expected to adversely affect the approval of any Governmental Authority of any of the filings or applications referred to in this Section 5.1.

(iii) Buyer shall cooperate in good faith with all applicable Governmental Authorities and undertake promptly any and all actions required to complete lawfully the Transactions, including proffering and consenting to a governmental order providing for the sale or other disposition, or the holding separate, of particular Transferred Assets, categories of Transferred Assets or lines of business, of either Transferred Assets or lines of business of Buyer or any of its Affiliates in order to remedy any material competition concerns that any Governmental Authority may have. The entry by any Governmental Authority in any legal proceeding of a governmental order permitting the consummation of the Transactions, but requiring any of the Transferred Assets or lines of business of Buyer or its Affiliates to be held separate or sold or disposed of thereafter, shall not be deemed a failure to satisfy the conditions specified in Article 6 or Article 7.

(iv) During the Interim Period, neither Buyer nor any of its Affiliates shall enter into any Contract to build, develop, acquire or operate any power facility that would reasonably be expected to cause a delay in or failure to obtain any Governmental Authority's granting of a Buyer Approval or a Seller Approval.

## 5.2 Access of Buyer.

(a) During the Interim Period, Seller will, and will coordinate with its Affiliates to and cause its Subsidiaries and any operator of any Transferred Asset to, provide Buyer and its Representatives with reasonable access, upon reasonable prior notice and during normal business hours, to the Plant Manager and Maintenance Manager and other employees and contractors for the Power Station and upon reasonable prior notice to Seller, during normal business hours and provide Buyer with access to the Transferred Assets, but only to the extent that such access (1) does not unreasonably interfere with the business of Seller or any of its Affiliates or the safe commercial operations of the Transferred Assets and (2) is reasonably related to Buyer's obligations and rights hereunder; *provided, however, that* (a) Seller shall have the right to have a Representative present for any communication with employees or officers of Seller or its Affiliates and (b) Buyer shall, and shall cause its Representatives to, observe and comply with all health, safety and security requirements at the Power Station. For purposes of clarification, Buyer shall not be entitled to collect any air, soil, surface water or ground water samples nor to perform any invasive or destructive sampling on, under, at or from any Transferred Asset and, for purposes of clarification, the conducting of such physical inspections shall not be a condition to Closing; and *provided, further, that* Buyer shall have the right to conduct Phase I environmental studies with respect to the Transferred Assets. Notwithstanding anything to the contrary in this Section 5.2, Buyer shall have no right of access to, and neither Seller nor any of

its Affiliates shall have any obligation to provide any information the disclosure of which could reasonably be expected to (1) jeopardize any attorney client or similar legal privilege available to Seller or its Affiliates, (2) cause Seller or its Affiliates to breach a confidentiality obligation to a third party; *provided that* Seller shall use commercially reasonable efforts to have such third party waive any such confidentiality obligation, or (3) result in a violation of Law. Promptly upon completion of any such access, Buyer shall repair at its sole expense any damage caused by such access.

(b) Buyer agrees to defend, indemnify and hold harmless Seller, its Affiliates and their respective Representatives for any and all liabilities, losses, costs or expenses incurred by Seller, its Affiliates or their respective Representatives arising out of the access rights under this Section 5.2, including any claims by any of Buyer's Representatives for any injuries or property damage while present on the site of any Transferred Asset.

5.3 **Certain Restrictions.** Except (x) as required or permitted hereby or required by the terms of this Agreement, any Transferred Permit or any requirements or limitations resulting from the Bankruptcy Cases, the Bankruptcy Court, or the Bankruptcy Code, (y) as consented to by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), or (z) as otherwise set forth in Schedule 5.3, during the Interim Period, Seller will (A) use commercially reasonable efforts to operate the Power Station in the ordinary course of business consistent with past practice, and (B) use commercially reasonable efforts to preserve its present business operations, organization and goodwill with respect to the Transferred Assets, and preserve its present relationship with Persons having business dealings with respect to the Transferred Assets. Without limiting the foregoing (except (i) as otherwise required by the terms of this Agreement, any Transferred Permit or any requirements or limitations resulting from the Bankruptcy Cases, the Bankruptcy Court, or the Bankruptcy Code, (ii) as consented to by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), (iii) as otherwise set forth on Schedule 5.3 and/or (iv) that none of this Section 5.3 shall apply to Excluded Assets, Excluded Liabilities, Excluded Records, or Contracts for which no Transferred Asset will be bound or have liability after Closing), during the Interim Period, Seller will not, and shall coordinate with its Affiliates and shall cause its Subsidiaries and any operators of the Transferred Assets not to, to the extent within their reasonable control, undertake any of the following without the consent of Buyer (which consent shall not be unreasonably withheld, conditioned or delayed):

(a) create or permit any Lien (other than a Permitted Lien) against any of the Transferred Assets;

(b) grant any waiver or consent of any term under any Assigned Contract;

(c) incur, assume, guarantee, or otherwise become liable in respect of any obligation or liability pertaining to the Transferred Assets resulting in material Assumed Liabilities, or issue any debt securities, or make any loans or purchase any securities of any Person;

(d) (i) sell, transfer, convey, license, sublicense, covenant not to assert, abandon, allow to lapse, or otherwise dispose of any material Transferred Assets, other than with respect to sales of gas or electricity in the ordinary course and consistent with existing Contracts, or (ii)



disclose to any third party any material trade secrets included in the Transferred Intellectual Property (other than pursuant to reasonably protective non-disclosure or confidentiality agreements);

(e) (i) terminate or materially amend, modify or supplement any Assigned Contract or Transferred Permit, or (ii) enter into any new Contract relating to the Transferred Assets in excess of \$100,000;

(f) amend or modify its Charter Documents in a manner that would have an adverse effect on the ability of Seller to consummate the Transactions;

(g) file any Tax Return, make any Tax election, or settle any liability for Taxes, in each case to the extent it would adversely affect Buyer in a Post-Closing Tax Period;

(h) fail to maintain limited liability company existence or merge or consolidate with any other Person or acquire all or substantially all of the assets of any other Person;

(i) issue or sell any membership interests, partnership interests or securities or rights convertible into membership interests, partnership interests or securities;

(j) liquidate, dissolve, recapitalize, reorganize or otherwise wind up its business or operations if any such action would impact the Transactions, except pursuant to the Plan;

(k) incur capital expenditures exceeding those permitted pursuant to the Cash Collateral Order;

(l) cancel any debts, discount any receivables, or waive, release, assign or settle any Proceedings with respect to the Transferred Assets or Assumed Liabilities, except pursuant to the Plan;

(m) cancel, terminate or allow any material property or liability insurance policy to lapse; or

(n) agree or commit to do any of the foregoing.

Notwithstanding the foregoing, Seller may take commercially reasonable actions with respect to (i) emergency situations (including to mitigate or remedy the endangerment of health or safety of any Person or the environment or in connection with any forced outage) or (ii) regulatory requirements and/or other requirements of Law (including preliminary curtailment or similar operating decisions taken as a safety precaution) and Seller shall, upon receipt of notice of any such actions, promptly inform Buyer of any such actions taken outside the ordinary course of business.

#### 5.4 **Tax Matters.**

(a) [Buyer shall pay all Transfer Taxes imposed on any Party by Law as a result of the Transactions. Seller and Buyer agree to cooperate in the execution and delivery of all instruments and certificates reasonably necessary to remit and/or minimize the amount of any

Transfer Taxes. If Seller is required by Law to pay any such Transfer Taxes, Buyer shall promptly reimburse Seller within ten (10) days of receipt of written request from Seller for such Transfer Taxes. Each Party shall timely file their own Transfer Tax returns as required by Law and shall notify the other Party when such filings have been made. Each Party shall cooperate and consult with each other prior to filing such Transfer Tax returns to ensure that all such returns are filed in a consistent manner.]

(b) If either Party receives any notice of any claim or Proceeding pending in respect of a Tax for which the other Party is responsible (or any significant developments with respect to ongoing claims or Proceedings in respect of such a Tax), the first-mentioned Party shall promptly inform the other Party of such notice or development. Each Party shall use commercially reasonable efforts to cooperate fully with the other Party, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns with respect to the Transferred Assets and any Proceeding with respect to Taxes associated with the Transactions or the Transferred Assets. Such cooperation shall include the retention and (upon the other Party's request) the provision of records and information which are reasonably relevant to any such Proceeding and making employees (to the extent such employees were responsible for the preparation, maintenance or interpretation of information and documents relevant to Tax matters or to the extent required as witnesses in any Tax Proceedings), available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Each Party agrees to retain all of its books and records with respect to Tax matters pertinent to the Transferred Assets relating to any taxable period beginning before the Closing Date until the expiration of the applicable statute of limitations and to abide by all record retention agreements entered into with any taxing authority. For the avoidance of doubt, in no event shall either Party be required to provide the other Party any information it deems confidential, including such Party's, or any of its Affiliates', Tax Returns.

(c) Subject to the final sentence of Section 5.4(b), Buyer will, solely at the expense of Seller (pursuant to reimbursement arrangements reasonably satisfactory to Buyer entered into prior to any actions to be taken by Buyer pursuant to this clause (c)), in good faith cooperate with Seller to furnish the information that is relevant to Seller's preparation and filing of any Tax Refund Claim and Buyer will make employees (to the extent such employees are relevant for the preparation, and filing of any Tax Refund Claim) available on a reasonable basis to provide additional information and explanation of any material provided hereunder in connection with any Tax Refund Claim.

#### 5.5 **Post-Closing Delivery and Retention of Records.**

(a) After the Closing Date, Buyer shall grant Seller (or its designees or successors in interest) access at all reasonable times to all of the Records relating to the Transferred Assets in its possession or the possession of its Affiliates, and shall afford Seller the right (at the expense, as applicable, of Seller, its designee or successor in interest) to take extracts therefrom and to make copies thereof, to the extent reasonably necessary to implement the provisions of, or to investigate or defend any claims among the Parties and/or their Affiliates arising under, this Agreement. Buyer shall maintain such Records until the second (2<sup>nd</sup>) anniversary of the Closing Date, or if any of the Records pertain to any claim or dispute pending on the second (2<sup>nd</sup>) anniversary of the Closing Date, Buyer shall maintain any of the Records designated by Seller or

its Representatives until such claim or dispute is finally resolved and the time for all appeals has been exhausted. Notwithstanding anything herein to the contrary, in the event of a dispute, the furnishing of, or access to, the Records shall be subject to applicable rules relating to discovery. In addition, if Seller or any of its Affiliates reasonably believes it is required to disclose any such documents or information to comply with any Law or Order or any request made by any Governmental Authority or in connection with any legal, regulatory or administrative proceeding or process, Seller and any of its Affiliates may do so, without liability hereunder; *provided that* Seller will, and will coordinate with its Affiliates and cause its Subsidiaries to, to the extent reasonably practicable, provide Buyer with prompt notice so that Buyer may seek an appropriate protective order or other remedy, and Seller will, and will coordinate with its Affiliates and cause its Subsidiaries to, to the extent reasonably practicable and at the expense of Buyer, cooperate with Buyer to obtain any protective order or other remedy.

(b) For the avoidance of doubt, from and after the Closing, all confidential non-public information with respect to the Transferred Assets and Assumed Liabilities shall be deemed confidential information of Buyer, and Seller shall maintain the confidentiality thereof unless as may be required to be disclosed by any applicable Law or Order or unless such information is (i) made known or otherwise provided to Seller or its Affiliates from sources other than those directly related to Seller's prior ownership of the Transferred Assets and Assumed Liabilities, to the extent not in breach of confidentiality obligations of such sources to Buyer or its Affiliates, (ii) in the public domain other than as a result of disclosure by Seller or any of its Affiliates in violation of this Section 5.5, or (iii) acquired after the Closing by Seller or its Affiliates from a source other than Buyer, *provided that* such source is not known by Seller to be bound by a confidentiality agreement or arrangement with Buyer.

5.6 **Support Obligations**. Prior to Closing, subject to the commercially reasonable cooperation of Seller, and except with respect to any Support Obligations (as defined below) issued under or pursuant to any Contracts which are not Transferred Assets or discharged by the Bankruptcy Court, Buyer shall [use commercially reasonable efforts to] effect the full and unconditional release, effective as of the Closing, of Seller and/or any of its Affiliates, as applicable, from the outstanding credit support obligations provided by Seller or any of its Affiliates with respect to the Transferred Assets set forth on Schedule 5.6 ("**Support Obligations**"), including by offering to put in place, concurrently with the Closing, letters of credit, as reasonably required, to effect the replacement of such Support Obligations by or at the Closing. Notwithstanding the foregoing, if the form of the Support Obligation is cash (whether cash collateral or cash deposit), Buyer shall have no obligation to replace such cash collateral or cash deposit, and Seller shall keep such cash collateral or cash deposit in place, and shall not retrieve or remove such cash collateral or cash deposit from the counterparty for the benefit of Buyer after Closing and such cash collateral shall be a Transferred Asset.

5.7 **Failure to Obtain Consent**. Notwithstanding anything to the contrary contained in this Agreement or any Closing Agreement, to the extent that the transfer to Buyer of any Assigned Contract, Transferred Intellectual Property or Transferred Permit requires the authorization, approval, consent or waiver of, any Governmental Authority or any other Person, and Buyer, acting in its sole discretion, agrees to waive the requirement that such Assigned Contract, Transferred Intellectual Property or Transferred Permit be conveyed as a condition to Closing and the Closing occurs without such authorization, approval, consent or waiver having

been obtained, then (i) neither this Agreement nor the transactions contemplated by any Closing Agreement shall constitute a transfer of such Assigned Contract, Transferred Intellectual Property or Transferred Permit, or an attempt thereof and (ii) such Assigned Contract, Transferred Intellectual Property or Transferred Permit shall be retained by Seller and, unless and until transferred to Buyer pursuant to Section 5.14 after the Closing, deemed to be an Excluded Asset and subject to the terms of Section 2.2 and Section 2.4, and the obligations of Seller associated therewith shall thereupon be deemed Excluded Liabilities.

#### 5.8 Casualty and Condemnation.

(a) If during the Interim Period any of the Transferred Assets are damaged or destroyed by any casualty event or are taken by any condemnation event, then Seller shall prepare an estimate (or in the event Buyer objects to Seller's estimate within five (5) days of receipt of such estimate and within such five (5) day period Buyer specifies such objection and the basis for such objection in reasonable detail, Seller shall request a qualified independent firm reasonably acceptable to Seller and Buyer to prepare an estimate) within thirty (30) days following such event (i) in the case of such a casualty event, the sum of (a) the cost of restoring the Transferred Assets damaged or destroyed by such event to a condition reasonably comparable to their condition immediately prior to such casualty event plus (b) the amount of any lost profits with respect to such Transferred Assets reasonably expected to accrue after Closing as a result of such casualty event, or (ii) in the case of such a condemnation event, the condemnation value therefor (as applicable, such estimate being a "Casualty Estimate"). Any Casualty Estimate shall be prepared based on the best reasonably available information as of the date of such Casualty Estimate and, if the Closing is expected to occur prior to the thirty (30) day period referenced above, then the determination of such Casualty Estimate shall not delay, impair or otherwise affect the Closing Date, except that the Closing Date and, if the Termination Date would occur prior to such extended Closing Date, the Termination Date shall be extended to the third (3<sup>rd</sup>) Business Day after such Casualty Estimate is made; *provided that* Buyer shall have the right to terminate this Agreement pursuant to Section 5.8(b) below.

(b) If a Casualty Estimate with respect to a casualty or condemnation event is greater than ten percent (10%) of the Purchase Price, either Seller or Buyer shall have the right to terminate this Agreement in accordance with Article 9.

(c) If there has been a casualty event or condemnation event during the Interim Period and the Closing occurs, Buyer shall be entitled to all casualty insurance and condemnation proceeds.

5.9 Insurance. From and after the Closing, Buyer shall be solely responsible for providing insurance with respect to the Transferred Assets for any claims made with respect to any Transferred Asset relating to the period from and after Closing. Notwithstanding the foregoing, from and after the Closing, Seller shall use commercially reasonable efforts to cooperate with and permit Buyer to seek and obtain coverage under each of the insurance policies of Seller and its Affiliates, including without limitation, all general liability, automobile liability and other insurance policies, whether primary, umbrella, or excess, issued at any time prior to the Closing under which the Transferred Assets are insured. Seller shall not, and shall coordinate with its Affiliates not to and shall cause its Subsidiaries not to, release, commute,

buy-back, or otherwise eliminate coverage available for the Transferred Assets under such policies.

5.10 **Schedule Update**. From time to time prior to the Closing, but no less than five (5) days prior to the Closing, Seller may at its option supplement or amend and deliver updates to the Schedules to Article 3 (except, in each case, Schedule 3.8(a) which cannot be modified without the express prior written consent of Buyer) as necessary to complete or correct any information in such Schedules to Article 3 or in any representation or warranty in Article 3. For the avoidance of doubt, no such update made pursuant to this Section 5.10 shall be deemed to amend or supplement any such Schedules or prevent or cure any inaccuracy of any representation or warranty made in this Agreement, except that, if Buyer has the right to terminate this Agreement pursuant to Section 6.1 and Section 9.1 (as acknowledged by Seller) as a result of such Schedule update and does not exercise such right by the tenth (10<sup>th</sup>) day after the delivery of the Schedule update, then such Schedule update shall be deemed to have amended the applicable Schedule or Schedules as of the date of this Agreement and to have cured any misrepresentation or breach of warranty that otherwise might have existed hereunder by reason of the existence of such matter.

5.11 **Resale Certificate**. Buyer agrees to furnish to Seller any resale certificate or certificates or other similar documents it is legally entitled to provide that is reasonably requested by Seller to comply with pertinent sales and use Tax Laws.]

5.12 **Public Announcements**. Except in connection with the Bankruptcy Cases or as otherwise required by Law, each of Buyer and Seller will, and will coordinate with their respective Affiliates (as applicable) to and cause their respective Subsidiaries (as applicable) to, consult with the other regarding the timing and content of any press releases or public statements with respect to this Agreement or the Transactions; *provided, however, that* notwithstanding the foregoing in no event will Buyer or Seller issue any press release or public statement naming or containing any information with respect to Seller or Buyer, or their respective Affiliates, as applicable without the prior written consent of the other Party.

5.13 **Avoidance Actions**. Seller shall not pursue any litigation claims or causes of action (including Avoidance Actions) related to the Transferred Assets except for any Tax Refund Claim.

5.14 **Further Assurances**. If, after the Closing Date, either Buyer or Seller identifies any item of Transferred Assets (including Transferred Intellectual Property) that was inadvertently not transferred to Buyer, then Seller shall transfer such Transferred Asset (including Transferred Intellectual Property) to Buyer or its designated Affiliate for no additional consideration. If, after the Closing Date, either Buyer or Seller identifies any Excluded Asset (including Intellectual Property) that was inadvertently transferred to Buyer from Seller but that does not constitute a Transferred Asset (or Transferred Intellectual Property), then Buyer shall, or shall cause its applicable Affiliate to, promptly transfer such Excluded Asset (including any Intellectual Property that does not constitute Transferred Intellectual Property) to Seller or its designated Affiliate for no additional consideration. Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, at either Party's request and without further consideration, the other Party shall execute and deliver to such Party such other

instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such Party may reasonably request in order to consummate the Transactions; *provided, however, that* no such instruments, materials, information or actions shall increase either Party's liability, or decrease its rights, under this Agreement.

5.15 **Title Insurance Policy**. Seller agrees to cooperate in a commercially reasonable manner with Buyer's efforts to obtain title insurance with respect to the Transferred Assets, as Buyer may elect in its sole discretion, to be issued, if at all, by a national title insurer company selected by Buyer in its sole discretion. Seller shall use commercially reasonable efforts to deliver to such title insurer such customary affidavits and other documents as the title insurer may reasonably require in order to issue to Buyer a title insurance policy (including all customary endorsements reasonably requested by Buyer) which omits from such policy all exceptions for (i) parties in possession claiming through Seller; and (ii) mechanics', materialmen's' and other statutory liens (other than for Taxes which are not yet due and payable or for liens being contested in good faith and by Proceedings).

5.16 **Plan Modifications**. Seller agrees not to amend, amend and restate, supplement or otherwise modify the Plan in any manner adverse to Buyer without the prior written consent of Buyer (which consent shall not be unreasonably withheld).

5.17 **CARB Obligations Not a Closing Condition**. Notwithstanding anything in this Agreement to the contrary, Buyer shall be obligated to consummate the Closing of the Transactions regardless of any determination, decision or other Order by the Bankruptcy Court concerning the extent, if any, to which Buyer will be responsible for CARB Obligations relating to the Transferred Assets, including CARB Obligations relating to emissions of the Power Station before the Closing. For the avoidance of doubt, any such determination, decision or Order will not be considered a Material Adverse Effect.

## **ARTICLE 6**

### **BUYER'S CONDITIONS TO CLOSING**

The obligation of Buyer to consummate the Closing is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Buyer in its sole discretion):

#### **6.1 Representations and Warranties**

(a) The representations and warranties (other than the Fundamental Representations of Seller) made by Seller in Article 3 (without giving effect to any materiality or Material Adverse Effect qualifier contained therein) shall be true and correct on and as of the Closing Date as though made on and as of the Closing Date (other than those representations and warranties that speak to an earlier date, which representations and warranties shall be true and correct as of such earlier date); *provided that*, for purposes of this Section 6.1(a), the reference to "as of the date of this Agreement" in the lead-in to Article 3, which precedes Section 3.1, shall be disregarded, except where the failure to be true and correct would not reasonably be expected to have a Material Adverse Effect.

(b) The Fundamental Representations made by Seller and the representations of Seller set forth in Section 3.19(b) shall be true and correct in all respects (other than *de minimis* inaccuracies) on and as of the Closing Date as though made on and as of the Closing Date (other than those representations and warranties that speak to an earlier date, which representations and warranties shall be true and correct as of such earlier date; *provided* that, for purposes of this Section 6.1(b), the reference to “as of the date of this Agreement” in the lead-in to Article 3, which precedes Section 3.1, shall be disregarded).

6.2 **Performance.** Seller shall have performed and complied, in all material respects, with the covenants required by this Agreement to be performed or complied with by Seller at or before the Closing.

6.3 **Officer’s Certificate.** Seller shall have delivered to Buyer at the Closing an officer’s certificate, dated as of the Closing Date, as to the matters set forth in Sections 6.1 and 6.2.

6.4 **Consents and Approvals.** The FERC MBR Order, Buyer Approvals, the Seller Approvals and the Seller Consents, in each case listed on Schedule 6.4 shall have been duly obtained, made or given and shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental Authority with respect to the Buyer Approvals, the Seller Approvals and the Seller Consents in each case listed on Schedule 6.4(if applicable) shall have occurred; *provided, however, that* the absence of any appeals and the expiration of any appeal period with respect to any of the foregoing shall not constitute a condition to Closing hereunder.

6.5 **Orders and Laws.** There shall not be any Law or Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of the Transactions.

6.6 **Sale Order.** After notice and a hearing as defined in section 102(1) of the Bankruptcy Code, the Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not have been reversed, stayed, amended, enjoined, set aside, annulled or suspended as of the Closing Date or otherwise modified in a manner that results in such Sale Order no longer being an order of the Bankruptcy Court authorizing the Transactions.

6.7 **No Material Adverse Effect.** Since the date of this Agreement, no Material Adverse Effect shall have occurred and be continuing.

6.8 **Plan.** The Bankruptcy Court shall have entered an order confirming the Plan (the “**Confirmation Order**”), such Confirmation Order shall not have been reversed, stayed, amended, enjoined, set aside, annulled or suspended as of the Closing Date or otherwise modified in a manner that results in such Confirmation Order no longer being an order of the Bankruptcy Court confirming the Plan, and all conditions precedent to consummation of the Plan (other than the Closing) shall have been satisfied.

**ARTICLE 7**  
**SELLER'S CONDITIONS TO CLOSING**

The obligation of Seller to consummate the Closing is subject to the fulfillment of each of the following conditions (except to the extent waived in writing by Seller in its sole discretion):

**7.1 Representations and Warranties.**

(a) The representations and warranties (other than the Fundamental Representations of Buyer) made by Buyer in Article 4 (without giving effect to any materiality or material adverse effect qualifier contained therein) shall be true and correct on and as of the Closing Date as though made on and as of the Closing Date (other than those representations and warranties that speak to an earlier date, which representations and warranties shall be true and correct as of such earlier date; *provided that*, for purposes of this Section 7.1(a), the reference to “as of the date of this Agreement” in the lead-in to Article 4, which precedes Section 4.1, shall be disregarded), except where the failure to be true and correct would not reasonably be expected to have a material adverse effect on the ability of Buyer to consummate the Transactions.

(b) The Fundamental Representations made by Buyer shall be true and correct in all respects on and as of the Closing Date as though made on and as of the Closing Date (other than those representations and warranties that speak to an earlier date, which representations and warranties shall be true and correct as of such earlier date; *provided that*, for purposes of this Section 7.1(b), the reference to “as of the date of this Agreement” in the lead-in to Article 4, which precedes Section 4.1, shall be disregarded).

**7.2 Performance.** Buyer shall have performed and complied, in all material respects, with the covenants required by this Agreement to be so performed or complied with by Buyer at or before the Closing.

**7.3 Officer's Certificate.** Buyer shall have delivered to Seller at the Closing a certificate of an officer of Buyer, dated as of the Closing Date, as to the matters set forth in Sections 7.1 and 7.2.

**7.4 Orders and Laws.** There shall not be any Law or Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of the Transactions.

**7.5 Consents and Approvals.** The Buyer Approvals, the Seller Approvals and the Seller Consents, in each case listed on Schedule 7.5 shall have been duly obtained, made or given and shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental Authority with respect to the Buyer Approvals and the Seller Approvals, in each case listed on Schedule 7.5 (if applicable) shall have occurred; *provided, however, that* the absence of any appeals and the expiration of any appeal period with respect to any of the foregoing shall not constitute a condition to Closing hereunder.



**ARTICLE 8**  
**CLOSING**

8.1 **Closing**. The Closing shall take place at the offices of White & Case LLP, 1221 Avenue of the Americas, New York, New York 10023 at 10:00 A.M. local time, on the third Business Day after the conditions to Closing set forth in Article 6 and Article 7 (other than actions to be taken or items to be delivered at Closing, but subject to satisfaction of such conditions at the Closing) have been satisfied or waived, or on such other date and at such other time and place as Buyer and Seller mutually agree in writing (the “**Closing Date**”). All actions that occur on the Closing Date shall be deemed to occur simultaneously at the Closing, unless otherwise specified herein.

8.2 **Jointly Executed Closing Agreements**. Subject to the terms and conditions hereof, at the Closing, Buyer and Seller shall deliver, or cause to be delivered, the following to the other Party:

(a) the Bill of Sale executed by Buyer and Seller transferring all of the Transferred Assets (other than Transferred Assets which are transferred by a separate instrument pursuant to this Section 8.2 or Section 8.4); and

(b) the Assignment and Assumption Agreement executed by Buyer and Seller evidencing the assignment and transfer to Buyer of the Assigned Contracts.

8.3 **Buyer’s Executed Closing Agreements**. Subject to the terms and conditions hereof, at the Closing, Buyer shall deliver, or cause to be delivered, the following to Seller:

(a) an amount in immediately available funds, by way of wire transfer to an account or accounts designated by Seller, equal to the Cure Costs; and

(b) all such other agreements, documents, instruments and writings required to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement.

8.4 **Seller’s Executed Closing Agreements**. Subject to the terms and conditions hereof, at the Closing, Seller shall deliver, or cause to be delivered, the following to Buyer:

(a) a copy of the Sale Order;

(b) the Special Warranty Deed for the Transferred Real Property Assets properly executed by Seller and properly notarized so that same is in recordable form;

(c) a certificate of non-foreign status of Seller (or if Seller is disregarded as an entity separate from another Person for such purposes, of such other Person) meeting the requirements of Treasury Regulations Section 1.1445-2(b)(2);

(d) any Records (*provided that* any such Records which are located at the Power Station shall remain at the Power Station and all other such Records shall be delivered); and

(e) all such other agreements, documents, instruments and writings required to be delivered by Seller at or prior to the Closing Date pursuant to this Agreement.

**ARTICLE 9**  
**TERMINATION**

9.1 **Termination**. This Agreement may be terminated at any time before the Closing only:

(a) by mutual written consent of Buyer and Seller;

(b) by either Party upon written notice to the other Party if any Governmental Authority having competent jurisdiction has issued a final, non-appealable order, decree, ruling or injunction (other than a temporary restraining order) or taken any other action permanently restraining, enjoining or otherwise prohibiting the Transactions;

(c) by either Party upon written notice to the other Party if the Closing has not occurred on or before October 31, 2017 (as extended under Section 5.8(a), the “**Termination Date**”) and the failure to close is not caused by a breach of this Agreement by the terminating Party or any of its Affiliates;

(d) by Buyer or Seller, pursuant to Section 5.8(b);

(e) by Seller, if Buyer has breached its representations, covenants or agreements hereunder, and such breach would or does result in the failure of any condition expressly set forth in Article 7 (other than those that are within the control of Seller), and such breach has not been cured within thirty (30) days following written notification to Buyer thereof; *provided, however, that* if, at the end of such thirty (30) day period, Buyer is endeavoring in good faith, and proceeding diligently, to cure such breach, Buyer shall have an additional thirty (30) days in which to effect such cure; and *provided, further, that* Seller is not then in breach in any material respect of any representations, covenants or agreements hereunder;

(f) by Buyer, if Seller has breached its representations, covenants or agreements hereunder and such breach would or does result in the failure of any condition expressly set forth in Article 6 (other than those that are within the control of Buyer), and such breach has not been cured within thirty (30) days following written notification thereof; *provided, however, that* if, at the end of such thirty (30) day period, Seller is endeavoring in good faith, and proceeding diligently, to cure such breach, Seller shall have an additional thirty (30) days in which to effect such cure; and *provided, further, that* Buyer is not then in breach in any material respect of any representations, covenants or agreements hereunder; or

(g) by Buyer, if the Sale Order has not been entered on or before October 31, 2017;

9.2 **Effect of Termination**. If this Agreement is validly terminated pursuant to Section 9.1, the Parties shall have no further obligations or liabilities hereunder, except as provided in Section 5.2(b), this Section 9.2, Section 9.3, and Article 11; *provided that* nothing in this Section 9.2 shall relieve Buyer or Seller, as applicable, from liability for any knowing and intentional breach by Buyer or Seller, as applicable, prior to termination of this Agreement of

any material covenant or agreement of Buyer or Seller, as applicable, under this Agreement if such breach was intended to hinder, materially delay or prevent the Closing.

9.3 **Return of Documentation**. Following termination of this Agreement pursuant to Section 9.1, Buyer shall promptly (but in any event no more than ten (10) Business Days after the termination of this Agreement) return or destroy all agreements, Contracts, instruments, books, records, materials and other information regarding Seller or its Affiliates or the Transferred Assets provided to Buyer or any of its Representatives in connection with the Transactions.

## **ARTICLE 10** **SURVIVAL; REMEDIES**

10.1 **No Survival**. The representations and warranties contained herein and in any certificate or other writing delivered pursuant hereto shall terminate upon and not survive the Closing and there shall be no liability thereafter in respect thereof. Each of the covenants of the Parties hereto contained in this Agreement shall terminate upon the Closing except to the extent that performance under such covenant is to take place after Closing, in which case such covenant shall survive the Closing until the earlier of (i) performance of such covenant in accordance with this Agreement or, if time for performance of such covenant is specified in this Agreement, sixty (60) days following the expiration of the time period for such performance and (ii) the expiration of applicable statute of limitations with respect to any claim for any failure to perform such covenant; *provided that*, if a written notice of any claim with respect to any covenant to be performed after Closing is given prior to the expiration of such covenant then such covenant shall survive until, but only for purposes of, the resolution of such claim by final, non-appealable judgment or settlement.

10.2 **Indirect Claims**. From and after the Closing, each Party hereby releases the other Party and such other Party's Affiliates and respective Representatives (acting in their capacity as such), and each Party will coordinate with its Affiliates and cause its Subsidiaries to likewise release such other Party and its Affiliates and their respective Representatives (acting in their capacity as such), from and against any Losses, and shall not make any claim, for officer, director, partner, manager or controlling (or any other) stockholder or member liability or for breach of any fiduciary or other duty or breach of any employment or management contract (or similar arrangement) relating to any pre-Closing actions or failures to act (including negligence or gross negligence) in connection with the business, ownership or operation of any of the Transferred Assets prior to the Closing, *provided that* the foregoing shall not limit any of Seller's representations, warranties, covenants or agreements in this Agreement.

### 10.3 **Waiver of Other Representations**.

(a) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IT IS THE EXPLICIT INTENT OF EACH PARTY, AND THE PARTIES HEREBY AGREE, THAT NONE OF SELLER NOR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES HAS MADE OR IS MAKING ANY REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING ANY IMPLIED REPRESENTATION OR WARRANTY

AS TO THE CONDITION, MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO ANY OF THE TRANSFERRED ASSETS, OR ANY PART THEREOF, EXCEPT THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY MADE BY SELLER IN ARTICLE 3. IN PARTICULAR, AND WITHOUT IN ANY WAY LIMITING THE FOREGOING, (I) NONE OF SELLER NOR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES MAKES ANY REPRESENTATION OR WARRANTY REGARDING ANY ENVIRONMENTAL MATTERS EXCEPT AS EXPRESSLY MADE BY SELLER IN SECTION 3.6 AND (II) NONE OF SELLER NOR ANY OF ITS AFFILIATES OR THEIR RESPECTIVE REPRESENTATIVES MAKES ANY REPRESENTATION OR WARRANTY TO BUYER WITH RESPECT TO ANY FINANCIAL PROJECTIONS OR FORECASTS RELATING TO ANY OF THE TRANSFERRED ASSETS.

(b) EXCEPT AS OTHERWISE CONTAINED IN ARTICLE 2, AND EXCEPT FOR THOSE REPRESENTATIONS AND WARRANTIES EXPRESSLY CONTAINED IN ARTICLE 3, SELLER'S INTERESTS IN THE TRANSFERRED ASSETS ARE BEING TRANSFERRED "AS IS, WHERE IS, WITH ALL FAULTS," AND SELLER AND ITS AFFILIATES AND THEIR RESPECTIVE REPRESENTATIVES EXPRESSLY DISCLAIM, AND BUYER AND ITS AFFILIATES AND THEIR RESPECTIVE REPRESENTATIVES EXPRESSLY DISCLAIM RELIANCE UPON ANY AND ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, INCLUDING REPRESENTATIONS AND WARRANTIES AS TO THE CONDITION, VALUE OR QUALITY OF ANY OF THE TRANSFERRED ASSETS OR THE PROSPECTS (FINANCIAL, ENVIRONMENTAL OR OTHERWISE), RISKS AND OTHER INCIDENTS OF ANY OF THE TRANSFERRED ASSETS.

(c) BUYER ACKNOWLEDGES THAT THE REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 3 AND IN ANY CERTIFICATE OF SELLER OR ANY OTHER DOCUMENT OR INSTRUMENT DELIVERED BY SELLER AT THE CLOSING ARE THOSE ONLY OF SELLER AND NOT OF ANY OTHER PERSON INCLUDING ANY AFFILIATE OR REPRESENTATIVE OF SELLER OR ANY OF ITS AFFILIATES. BUYER FURTHER ACKNOWLEDGES, ON BEHALF OF ITSELF AND ITS AFFILIATES, THAT IT HAS NOT RELIED ON ANY REPRESENTATION NOT EXPRESSLY SET FORTH IN ARTICLE 3 OF THIS AGREEMENT OR IN ANY CERTIFICATE OF SELLER OR ANY OTHER DOCUMENT OR INSTRUMENT DELIVERED BY SELLER IN CONNECTION HEREWITH.

#### 10.4 Waiver of Remedies.

(a) NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY NOR ANY OF ITS AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, OR LOST PROFITS (OTHER THAN DAMAGES THAT ARE THE NATURAL AND PROBABLE CONSEQUENCE OF ANY BREACH AND FLOW DIRECTLY FROM SUCH BREACH), WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OTHER LAW OR OTHERWISE AND WHETHER OR NOT ARISING FROM SELLER'S OR ANY OF ITS

AFFILIATES' SOLE, JOINT OR CONCURRENT NEGLIGENCE, STRICT LIABILITY OR OTHER FAULT; PROVIDED, HOWEVER, THAT IN NO EVENT SHALL THIS SECTION 10.4(a) BE A LIMITATION ON ANY OBLIGATION OF EITHER PARTY HEREUNDER WITH RESPECT TO A THIRD PARTY CLAIM RELATING TO SUCH OBLIGATION.

(b) Notwithstanding anything in this Agreement to the contrary, (i) no Person other than Seller (including no Affiliate of Seller, no Representative of Seller or any of its Affiliates, and no Person directly or indirectly owning any interest in Seller) shall have any liability to Buyer or any other Person as a result of the breach of any representation, warranty, covenant, or agreement of Seller in this Agreement or in any certificate delivered pursuant to this Agreement, and (ii) no Representative or Affiliate of Buyer (nor any Representative of any such Affiliate or any Person directly or indirectly owning any interest in Buyer) shall have any liability to Seller or any other Person as a result of the breach of any representation, warranty, covenant, or agreement of Buyer in this Agreement or in any certificate delivered pursuant to this Agreement.

## **ARTICLE 11** **GENERAL PROVISIONS**

### 11.1 **Notices.**

(a) Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by facsimile or electronic mail or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Seller, addressed to:

La Paloma Generating Company, LLC  
1700 Pennsylvania Avenue, NW, Suite 800  
Washington, D.C., 20006  
Attn: Andrew Ellenbogen

with a copy to counsel for Seller:

Debevoise & Plimpton, LLP  
919 Third Avenue  
New York, NY 10022  
Attn: M. Natasha Labovitz; Craig A. Bruens  
Facsimile No.: (212) 521-7944  
Email: nlabovitz@debevoise.com; cabruens@debevoise.com

If to Buyer, addressed to:

\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

with a copy to counsel for Buyer:

White & Case LLP  
1221 Avenue of the Americas  
New York, NY 10021  
Attn: Roberto Kampfner, Andrew Zatz and Michael Shenberg  
Email: rkampfner@whitecase.com, andrew.zatz@whitecase.com and  
mshenberg@whitecase.com

(b) Notice given by personal delivery, mail or overnight courier pursuant to this Section 11.1 shall be effective upon physical receipt. Notice given by facsimile or electronic mail pursuant to this Section 11.1 shall be effective as of the date of confirmed delivery if delivered before 5:00 p.m. Central Time on any Business Day or the next succeeding Business Day if confirmed delivery is after 5:00 p.m. Central Time on any Business Day or during any non-Business Day. Each Party may change the address by which proper notice shall be given pursuant to this Section 11.1 by providing notice to the other Party in accordance with this Section 11.1.

11.2 **Entire Agreement.** This Agreement supersedes all prior discussions, representations and warranties, and agreements between the Parties and/or their Affiliates with respect to the subject matter hereof and, except as set forth in the Sale Order and the Plan, contains the sole and entire agreement between the Parties and their Affiliates hereto with respect to the subject matter hereof.

11.3 **Expenses.** Except as otherwise expressly provided in this Agreement, whether or not the Transactions are consummated, each Party will pay its own costs and expenses incurred in anticipation of, relating to and in connection with the negotiation and execution of this Agreement and the Transactions.

11.4 **Disclosure.**

(a) Seller may, at its option, include in the Schedules items that are not material, and any such inclusion, or any references to dollar amounts, shall not be deemed to be an acknowledgment or representation that such items are material, to establish any standard of materiality or to define further the meaning of such terms for purposes of this Agreement. Information disclosed in any Schedule shall constitute a disclosure for all purposes under this Agreement to the extent that the relevance of such disclosure in such Schedule to any other Schedules is readily apparent on its face.

(b) In no event shall disclosure of any matter, fact, occurrence, information or circumstance in this Agreement be deemed or interpreted to broaden the scope of, or alter or otherwise change, the representations and warranties, obligations, covenants, conditions, indemnities or agreements contained in this Agreement, or to create any representation, warranty, obligation, covenant, condition, indemnity or agreement that is not contained in the Agreement. The inclusion of any matter, fact, information or circumstance in this Agreement shall not be construed as an admission or acknowledgment or otherwise imply that such matter,

fact, occurrence, information or circumstance is required to be listed in this Agreement in order for any representation or warranty in the Agreement to be true and correct, or that any such matter, fact, occurrence, information or circumstance arises to a Material Adverse Effect or is material (or not material) to or outside (or in) the ordinary course of business of Seller (or the Transferred Assets) (or that any such matter, fact, occurrence, information or circumstance is above or below any specified threshold).

(c) Any exception, qualification or other disclosure set forth on this Agreement with respect to a particular representation, warranty or covenant contained in this Agreement shall be deemed to be an exception, qualification or other disclosure with respect to all other representations, warranties and covenants contained in this Agreement to the extent any description of facts regarding the event, item or matter disclosed is adequate so as to make readily apparent on its face that such exception, qualification or disclosure is applicable to such other representations, warranties or covenants whether or not such exception, qualification or disclosure is so numbered.

(d) Matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Schedules. In particular, although the Schedules may contain supplementary information not specifically required under this Agreement to be included in the Schedules, such additional matters are set forth for informational purposes, are not represented or warranted in this Agreement and do not necessarily include other matters of a similar nature.

(e) All references in this Agreement to the enforceability of agreements with third parties, the existence or non-existence of third-party rights, the absence of breaches or defaults by third parties, or similar matters or statements, are not intended to be admissions against interests or give rise to any inference or proof of accuracy. In addition, the disclosure of any matter in the Schedules is not to be deemed an admission against any party that such matter actually constitutes noncompliance with or a violation of Contract or Law or other topic to which such disclosure is applicable.

(f) In disclosing any matter, fact, occurrence, information or circumstance in this Agreement, the disclosing party is not waiving any attorney-client privilege associated with any such matter, fact, occurrence, information or circumstance, or any protection afforded by the “work product doctrine” with respect to any of the same.

11.5 **Waiver**. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law, will be cumulative and not alternative.

11.6 **Amendment**. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by Seller and Buyer.

11.7 **No Third Party Beneficiaries.** Except for the provisions of Sections 5.2(b) and 10.2 and 10.4 (which are intended to be for the benefit of the Persons identified therein), the terms and provisions of this Agreement are intended solely for the benefit of the Parties and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person.

11.8 **Assignment; Binding Effect.** Buyer may assign its rights and obligations hereunder to an Affiliate but such assignment shall not release Buyer from its obligations hereunder. Except as provided in the preceding sentence, neither this Agreement nor any right, interest or obligation hereunder may be assigned by either Party without the prior written consent of the other Party and any required approval by the Bankruptcy Court, and any attempt to do so will be void, except for assignments and transfers by operation of Law. Subject to this Section 11.8, this Agreement is binding upon, inures to the benefit of and is enforceable by the Parties and their respective successors and permitted assigns.

11.9 **Headings.** The headings used in this Agreement have been inserted for convenience of reference only and do not modify, define or limit any of the terms or provisions hereof.

11.10 **Invalid Provisions.** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic and legal substance of the Transactions is not affected in any adverse manner to either Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the Transactions are fulfilled to the extent possible.

11.11 **Counterparts; Facsimile.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any facsimile or pdf copies hereof or signature hereon shall, for all purposes, be deemed originals.

11.12 **Governing Law; Venue; and Jurisdiction.**

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without giving effect to any conflict or choice of law provision that would result in the imposition of another state's Law.

(b) Each Party hereby irrevocably submits to the jurisdiction of the Bankruptcy Court in connection with any such action, suit or Proceeding brought in connection with the rights and obligations of the Parties pursuant to this Agreement, and agrees that any such action, suit or Proceeding may be brought in such court; *provided, however, that* if the Bankruptcy Court is unwilling or unable to hear any such action, suit or Proceeding, the United States District Court for the Southern District of New York and any New York state court, in each case, sitting in New York County, New York, shall have sole jurisdiction over such matters. Each Party hereby irrevocably waives the defense of an inconvenient forum to the maintenance in such courts of



any such action or Proceeding. Each Party further agrees to accept service of process out of any of the before mentioned courts in any such dispute by registered or certified mail addressed to the Party at the address set forth in Section 11.1.

(c) EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND WITH RESPECT TO ANY COUNTERCLAIM THEREIN.

11.13 **Conflicts with Plan or Confirmation Order.** To the extent there are any conflicts among this Agreement, the Closing Agreements and the Plan or Confirmation Order, the terms of the Plan or Confirmation Order (as applicable) shall control.

11.14 **Attorneys' Fees.** If either Party shall bring an action to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and expenses incurred in such action from the unsuccessful Party.

11.15 **Specific Performance.** Each Party hereby acknowledges and agrees that the rights of each Party to consummate the Transactions (including the satisfaction of any condition to Closing) are special, unique and of extraordinary character and that, if either Party violates or fails or refuses to perform any covenant or agreement made by it herein, the non-breaching Party will be without an adequate remedy at law. If either Party violates or fails or refuses to perform any covenant or agreement made by such Party herein, the non-breaching Party subject to the terms hereof, may (at any time prior to the earlier of valid termination of this Agreement pursuant to Article 9 and Closing) institute and prosecute an action in any court of competent jurisdiction to enforce specific performance of such covenant or agreement or seek any other equitable relief. For purposes of clarification, nothing contained in this Agreement, shall prevent or impair the ability of a Party to seek specific performance prior to the earlier of valid termination of this Agreement in accordance with Article 9 and Closing.

11.16 **Joint and Several Liability.** Notwithstanding anything in this Agreement to the contrary, the obligations and liabilities of Seller shall be joint and several.

*[SIGNATURES ARE ON THE FOLLOWING PAGE]*

IN WITNESS WHEREOF, the Parties have duly executed this Agreement on the date first above written.

**BUYER:**

**CXA LA PALOMA, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SELLER:**

**LA PALOMA GENERATING COMPANY,  
LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CEP LA PALOMA OPERATING COMPANY,  
LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_